

# **HOMER ANNEXATION REMAND**

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## **SUMMARY OF LBC STAFF REPORT, CONCLUSIONS, AND RECOMMENDATIONS**

**November 20, 2004**

**Prepared by:  
Local Boundary Commission Staff  
Alaska Department of Commerce, Community, & Economic Development**



# TOPICS

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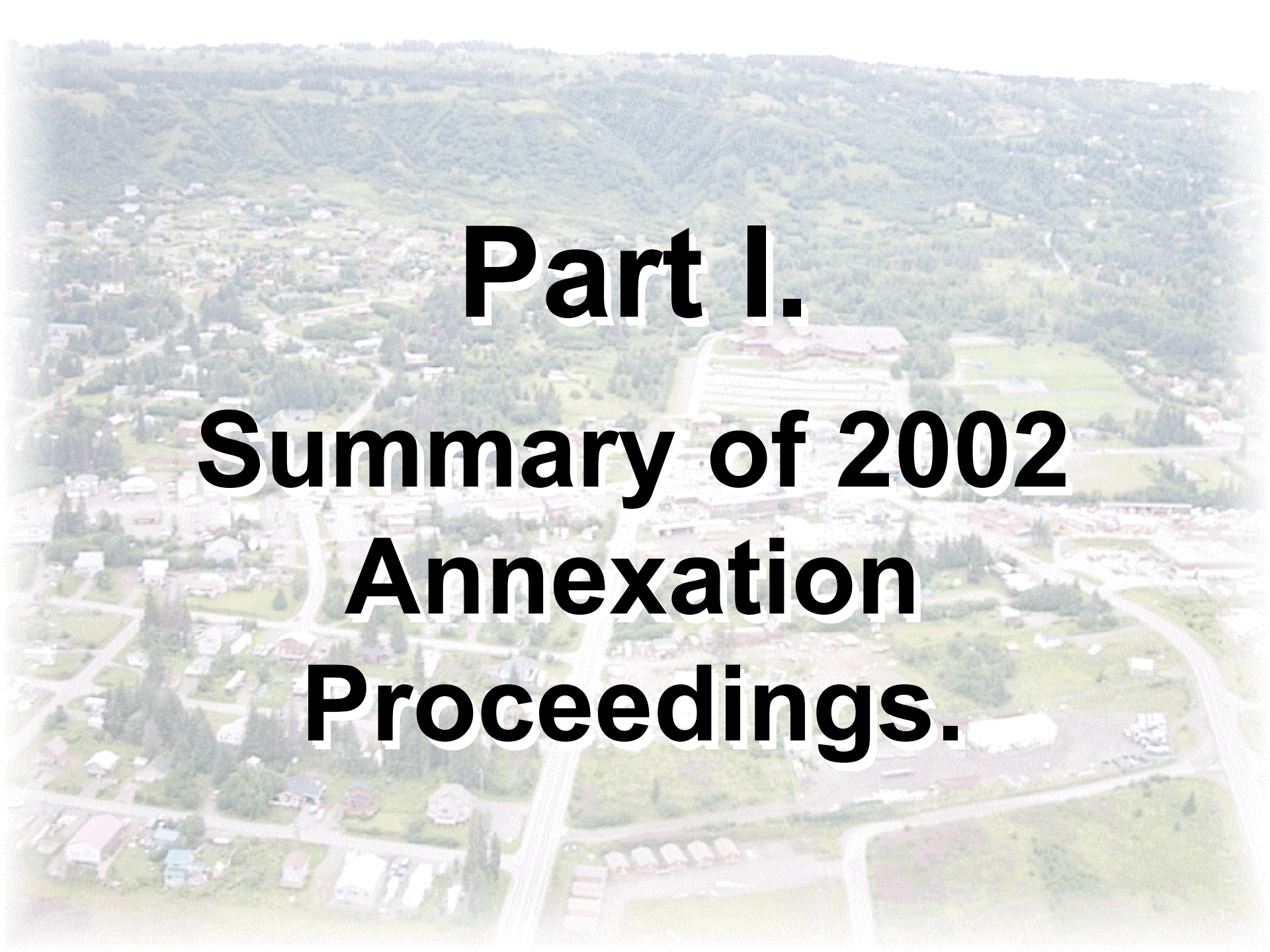
**Part I. Summary of 2000 - 2002  
Annexation Proceedings.**

**Part II. Superior Court Remand.**

**Part III. Effect of Annexation on  
KESA.**

**Part IV. Staff's Conclusions and  
Recommendations.**



An aerial photograph of a town, likely in a mountainous region, showing a mix of residential houses, commercial buildings, and green spaces. A large, multi-story building is prominent in the center. The text is overlaid on the image.

# **Part I.**

# **Summary of 2002**

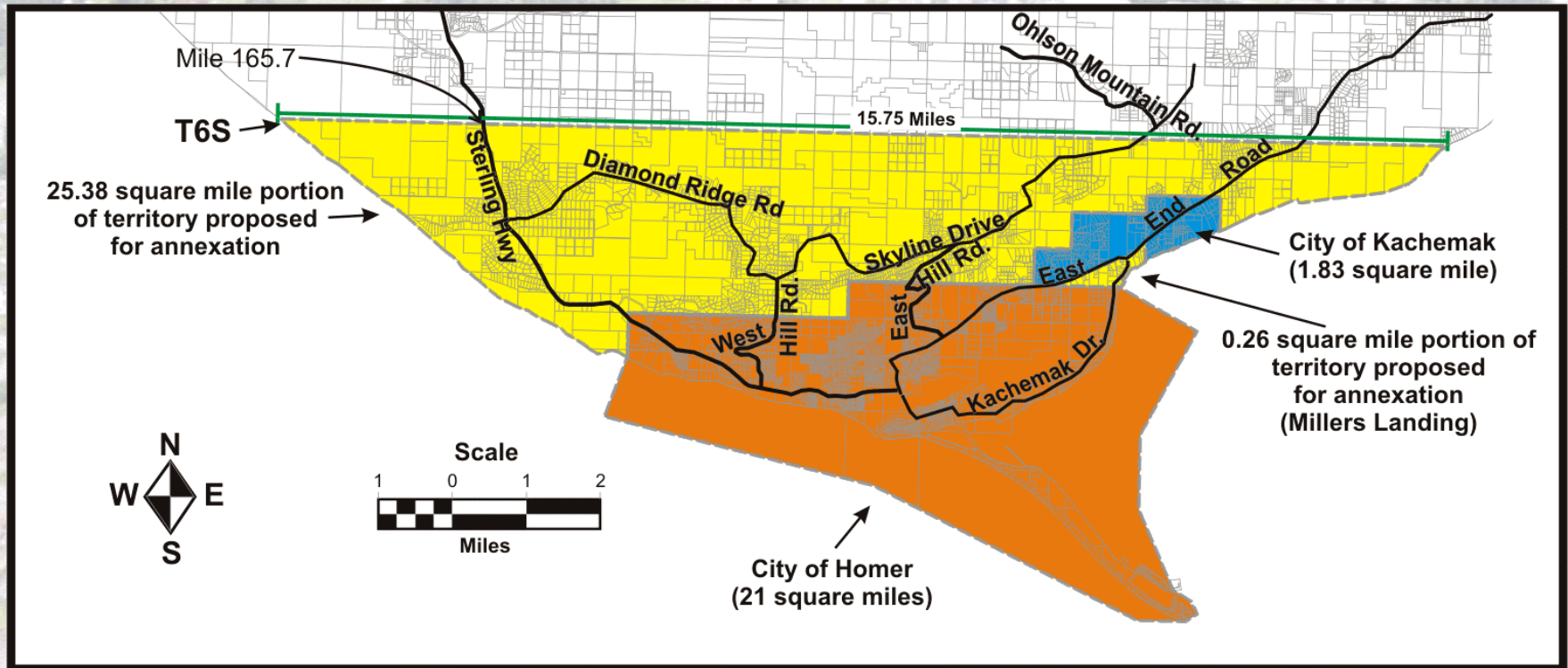
# **Annexation**

# **Proceedings.**



**March 20, 2000**

**City of Homer petitioned LBC  
to annex 25.64 square miles.**







**April 25, 2000**

**Five weeks later, notwithstanding constitutional and statutory limits, voters petitioned for creation of service area overlapping territory proposed for annexation.**

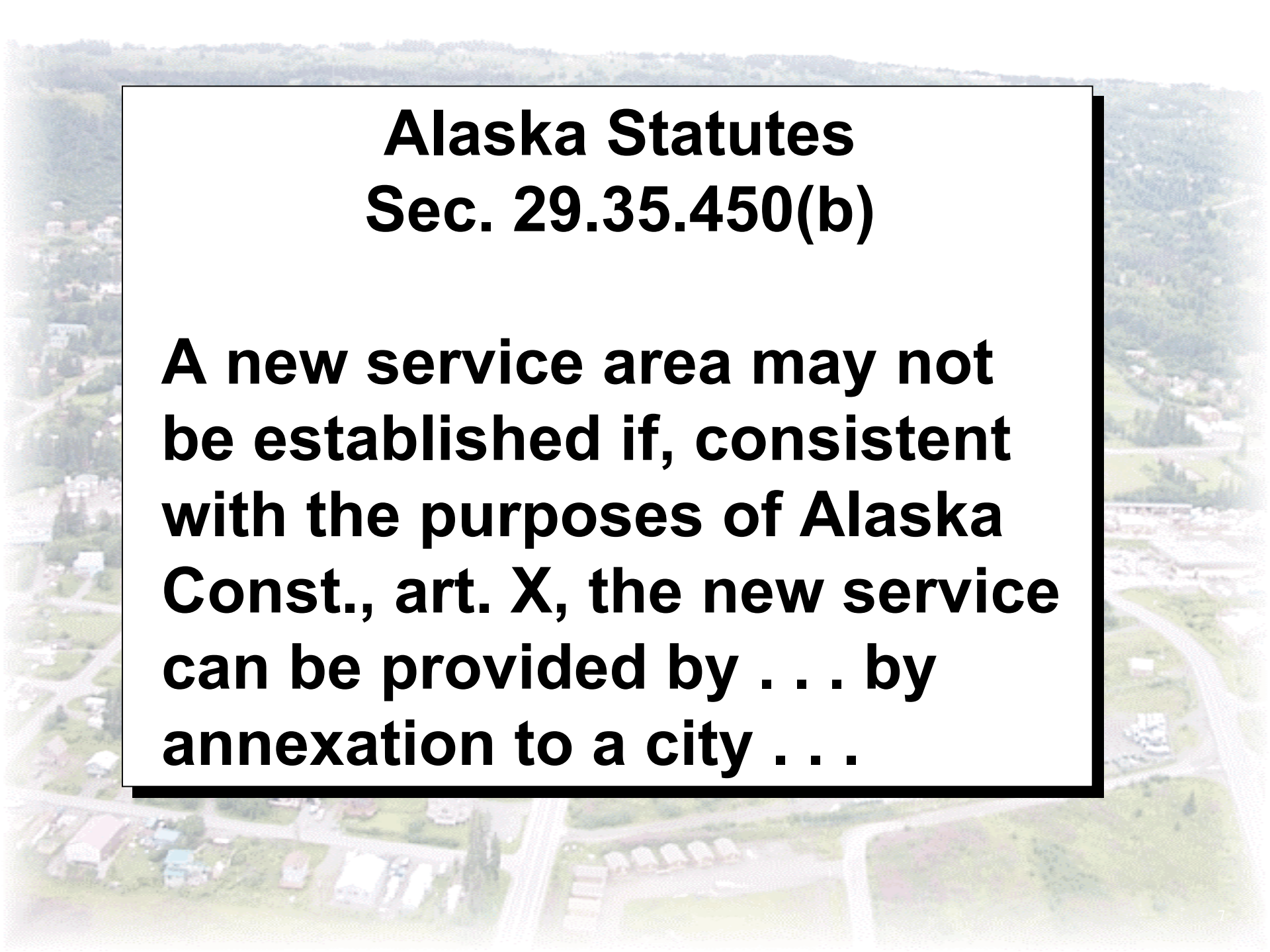


An aerial photograph of a town with green hills in the background. A large white rectangular box with a black border is centered on the image, containing text.

# **Alaska Constitution**

## **Art. X, Sec. 5. Service Areas.**

**. . . A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided . . . by annexation to a city.**

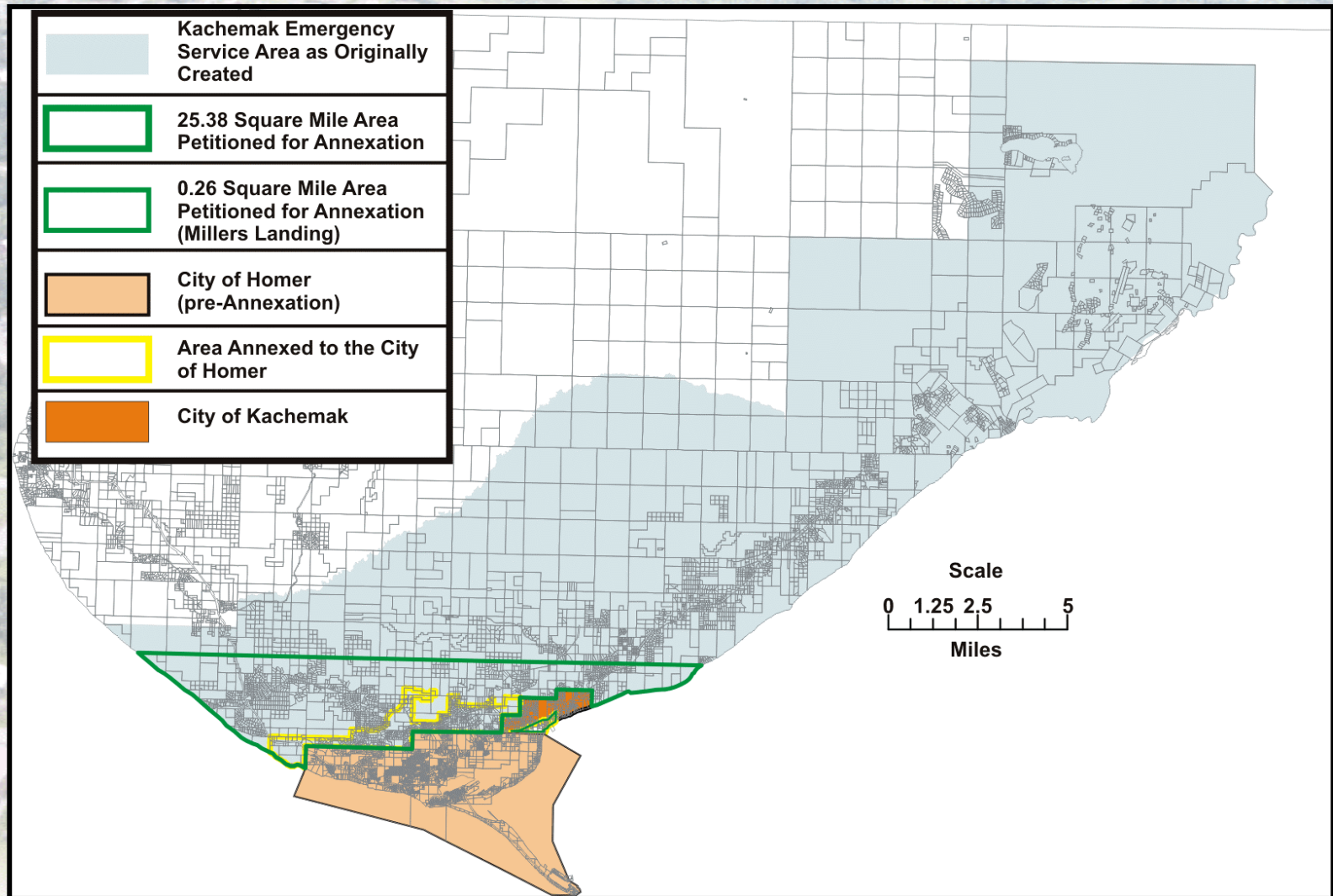


## **Alaska Statutes Sec. 29.35.450(b)**

**A new service area may not be established if, consistent with the purposes of Alaska Const., art. X, the new service can be provided by . . . by annexation to a city . . .**



# Proposed Service Area Originally Comprised 218.65 Miles<sup>2</sup>





# **May 25, 2000 Borough**

**Borough Mayor reported to Assembly:**

- **“taxable value of the proposed service area is \$199,193,000.”**
- **“There are approximately 10,539 persons residing in the proposed service area.”**





# **KESA'S Reported Per Capita Tax Base:**

$$\begin{aligned} & \$199,193,000 \div \\ & 10,539 \text{ residents} \\ & = \text{\textcolor{red}{\$18,901/resident}} \end{aligned}$$



**August 15, 2000**

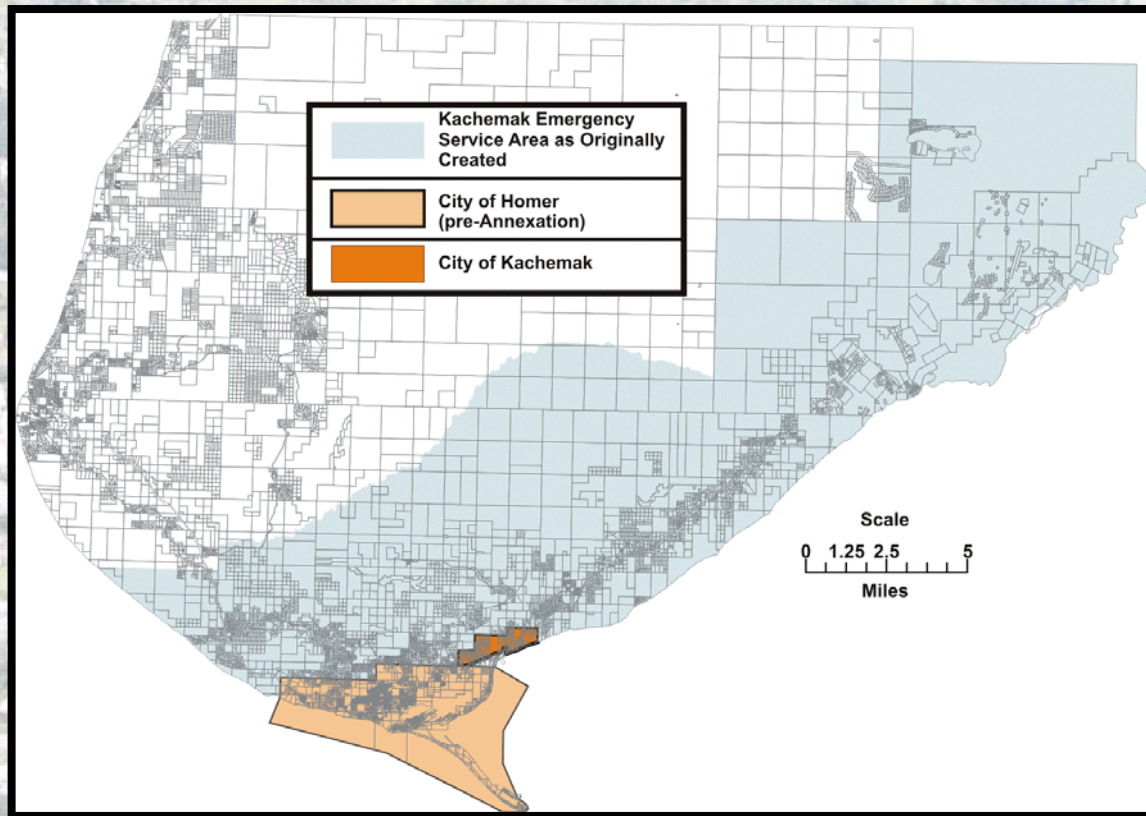


**Assembly  
authorized  
formation of  
KESA  
subject to  
voter  
approval.**



# October 2, 2000

## Election on KESA formation.



**Although excluded from service area, Miller landing voters participated in election.**



**October 10, 2000**



**Assembly  
certified  
voter  
approval of  
KESA.**



An aerial photograph of a town, likely in a mountainous region, with a road running through the center. The town is surrounded by green hills and forests. The text is overlaid on the image.

**April 26, 2001**

**KESA Board submitted \$374,372  
budget proposal to KPB  
Assembly.**



An aerial photograph of a town, likely KESA, showing residential areas, commercial buildings, and a large parking lot. The town is surrounded by green hills. Overlaid on the image is the date "June 5, 2001" in a large, bold, black font with a white outline, underlined. Below the date is another line of text in the same style: "Assembly approved \$50,000 KESA budget." The text is centered horizontally.

**June 5, 2001**

**Assembly approved \$50,000  
KESA budget.**



An aerial photograph of a town, likely Homer, Alaska, showing a mix of residential houses, commercial buildings, and green spaces. A major road runs vertically through the center of the town. The background features rolling hills covered in dense forest.

**July 9, 2001**

**KPB signed contract with City of  
Homer to serve KESA.**



**October 2, 2001**

**LBC Staff Preliminary Report  
Issued.**

**KESA addressed on pages:  
5, 12, 13, 25, 195, 246, 253,  
263, 264, 295, 296, 303, 306,  
307, 308, 313, 314, 315, 322,  
338, 340, 359, and 367.**



An aerial photograph of a town, likely in the Pacific Northwest, showing a large stadium in the center, surrounded by residential areas and green spaces. The text is overlaid on this image.

**November 21, 2001**

**LBC Staff Final Report Issued.**

**KESA further addressed on  
pages: 9, 19, 20, 22, 34, A-8, A-  
9, A-12, and A-15.**



# 35-pound record before the LBC was unprecedented.

- Petition;
- 14 Responsive Briefs;
- Reply Brief;
- Staff Preliminary Report;
- Comments on Preliminary Report;
- Staff Final Report.



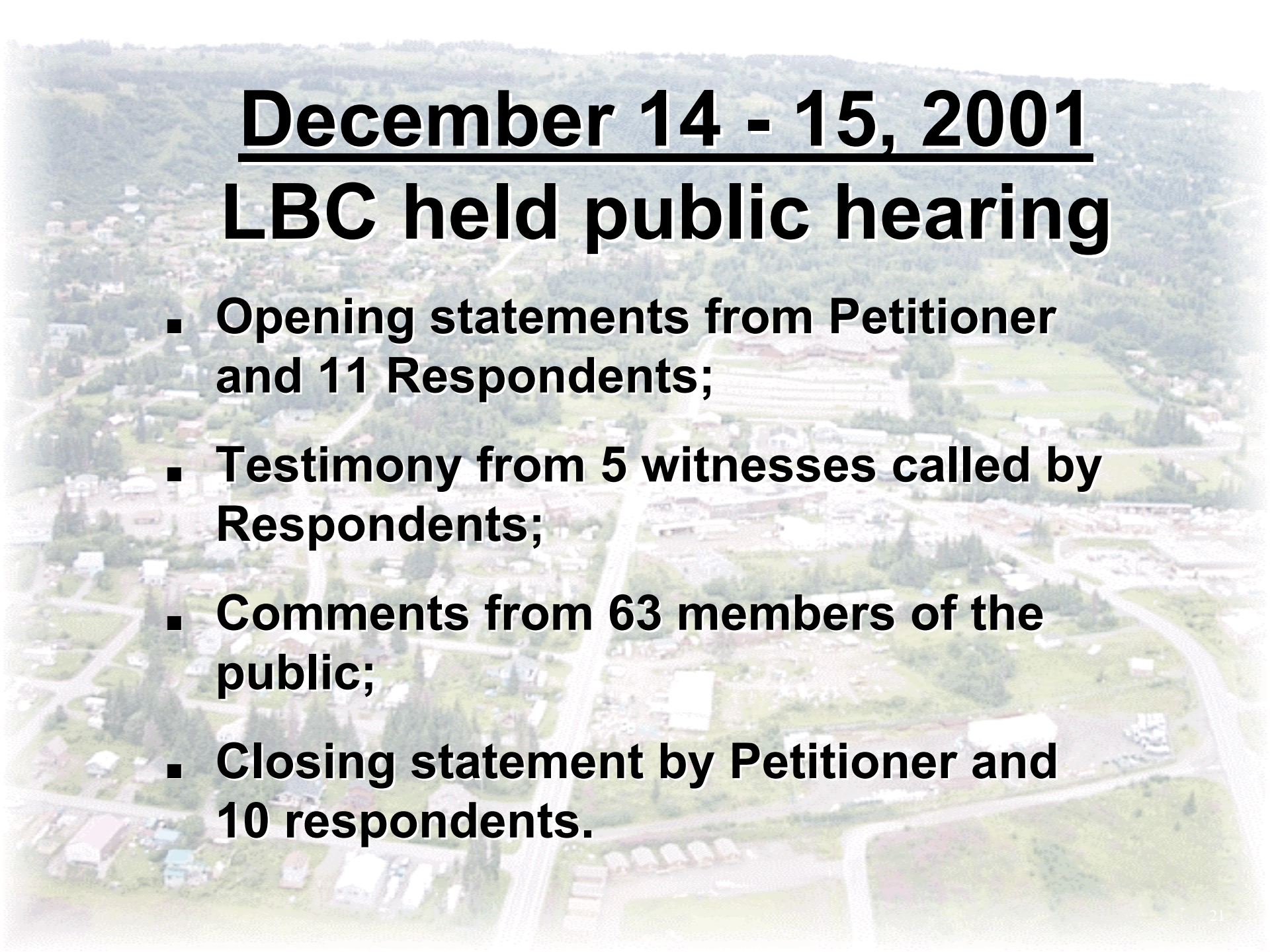


**December 13, 2001**



**Local  
Boundary  
Commission  
toured territory  
proposed for annexation by  
helicopter and automobile.**





# **December 14 - 15, 2001**

## **LBC held public hearing**

- **Opening statements from Petitioner and 11 Respondents;**
- **Testimony from 5 witnesses called by Respondents;**
- **Comments from 63 members of the public;**
- **Closing statement by Petitioner and 10 respondents.**



# December 26, 2001

## LBC approved annexation of 4.58 square miles.

Statement of Decision  
City of Homer  
Page 4

Statement of Decision  
City of Homer  
Page 2

Petitioner is the Homer News, a newspaper of general circulation in the territory, on April 3, April 10, and April 17, 2000.

DCED arranged for publication of the notice of filing of the Petition on the State of Alaska's Internet Website, Online Public Services. The notice was also published in the LBC (Internet Website maintained by DCED).

As required, was provided, presented for:

1. Village
2. Public
3. Northern

Notice of the location at:

1. District
2. State
3. United
4. Eagle
5. Litz

On April 3, 2000, through the territory City of Homer.

On April 3, 2000, following at:

1. State
2. State
3. South
4. City of
5. Homer
6. Litz
7. United
8. City of
9. City of

DCED staff members of:

1. Litz
2. Public
3. Litz

June 5, 2000, before and so:

1. In the lower case form, the word "city" refers to city governments in general.

State of Alaska  
Local Boundary Commission  
Statement of Decision

IN THE MATTER OF THE MARCH 20, 2000 PETITION BY THE CITY OF HOMER FOR ANNEXATION OF APPROXIMATELY 25.64 SQUARE MILES

SECTION I  
SUMMARY OF PROCEEDINGS

As allowed by Article X, § 12 of the Constitution of the State of Alaska, AS 44.33.12(a)(3), and 3 AAC 110.410, the City of Homer (hereinafter "City") or "Petitioner" formally initiated efforts on March 20, 2000 to expand its boundaries to encompass an additional estimated 25.64 square miles. The City did so by submitting a petition (hereinafter "Petition") to the Local Boundary Commission for "legislative review annexation" under Article X, § 12 of the Constitution of the State of Alaska, AS 20.06.04(b), and AS 44.33.81.2(b)(2).

The Petition was accepted for filing by the Alaska Department of Community and Economic Development (hereinafter "DCED") on March 29, 2000. DCED serves as staff to the Commission under AS 44.33.02(b)(3).

Public notice of the filing of the Petition was given under 3 AAC 110.450. Notice of filing of the Petition was published by the

1. In the lower case form, the word "city" refers to city governments in general.



# **LBC addressed KESA in 12/26/01 written decision:**

- **Effect of annexation on KESA in terms of civil and political rights (pp. 11-13);**
- **Application of AS 29.35.450(c) regarding voter approval (p. 15);**



# **12/26/01 decision (continued):**

- **Transition issues involving KESA (pp. 21 - 22);**
- **Comparative ability of the KPB and the City to serve the 4.58-square mile territory (pp. 28 - 30);**



# 12/26/01 decision (continued):

“Article X, § 5 of Alaska’s Constitution and AS 29.35.450(b) place particular limitations on the creation of new service areas. Both express a preference for city annexation over the creation of a new service area. . . .”

**LBC Decisional  
Statement, p. 28.**

**LBC  
recognized  
constitutional  
and statutory  
preference for  
annexation  
over creation  
of service  
area.**



# 12/26/01 decision (continued):

“Accordingly, no overriding significance is ascribed to the establishment of the Kachemak Emergency Service Area.”

LBC Decisional  
Statement, p. 29.

**LBC did not  
lend great  
weight to  
formation of  
KESA given  
constitutional  
and statutory  
limits.**



# 12/26/01 decision (continued):

“In other proceedings, the [LBC] has largely ignored increases in borough services within an area proposed for city annexation if the changes were made only recently and if they appeared to have been motivated, in part, by an effort to weaken the merits of an annexation proposal.”

**LBC Decisional  
Statement, p. 30.**

**LBC noted its position was consistent with actions taken in prior proceedings involving similar circumstances.**



# **12/26/01 decision (continued):**

- **Alternative of transferring powers from City to service area not viable (p. 34);**
- **Absent annexation, prospect exists for proliferation of service areas (p. 36).**

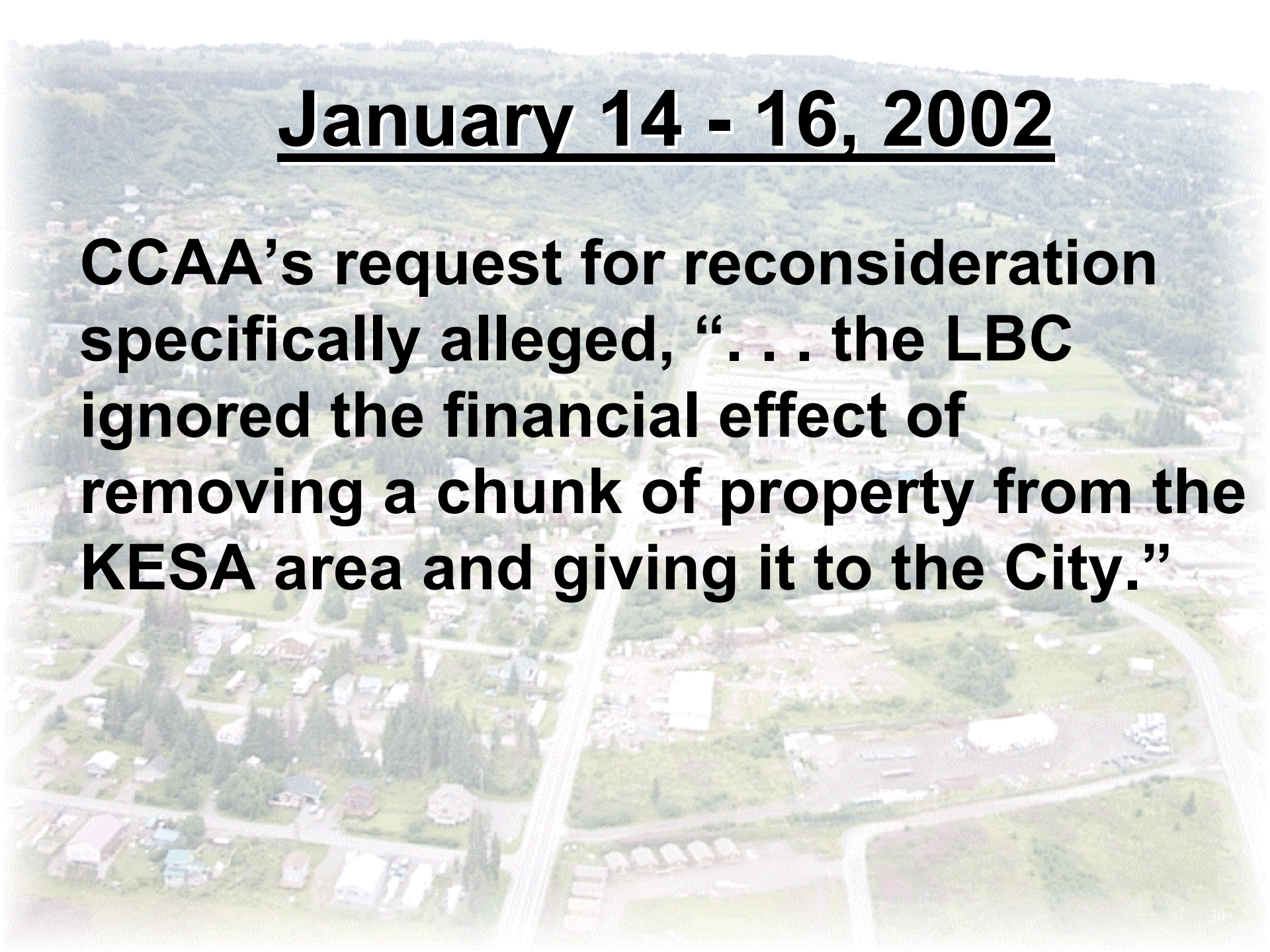


# **January 14 - 16, 2002**

**Requests for reconsideration were submitted to the LBC by:**

- **Citizens Concerned About Annexation (CCAA);**
- **Abigail Fuller;**
- **Alaskans Opposed to Annexation by Erwin and Erwin;**
- **Doris Cabana and “Alaskans Opposed Against Annexation”;**
- **Sallie Dodd Butters; and**
- **Pete Roberts.**





**January 14 - 16, 2002**

**CCAA's request for reconsideration specifically alleged, "... the LBC ignored the financial effect of removing a chunk of property from the KESA area and giving it to the City."**





**January 17, 2002**

**LBC rejected reconsideration requests from CCAA and others.**

**Implicitly, LBC found that CCAA's concern over effect of annexation on KESA did not constitute a failure to address a material issue of fact or a controlling principle of law.**



An aerial photograph of a town, likely in a rural or semi-rural area. A main road runs vertically through the center of the image. To the left of the road, there are residential houses and some commercial buildings. To the right, there are more commercial buildings, including a large parking lot with several vehicles. The background shows a dense forest of trees. The text is overlaid on the top half of the image.

**January 23, 2002**

**LBC submitted proposal to  
Legislature for annexation of  
4.58 square miles.**



**February 5, 2002**

**Miller Landing, which the LBC had approved for annexation to the City of Homer, was added to KESA (purportedly, retroactive to January 1, 2002).**



# **February 7 - March 9, 2002**

**Legislature undertook extensive and critical review of proposal.**


- **House & Senate CRA Committees held 2.75-hour hearing on 02/07/02;**
- **House & Senate CRA Committees held 3.3-hour hearing on 02/09/02;**
- **House & Senate CRA Committees held 0.75-hour hearing 02/12/02;**



# **February 7 - March 9, 2002**

- **House CRA Committee held 1.5-hour hearing on 02/21/02;**
- **House CRA Committee (by 6 to 1 vote) rejected proposal to veto LBC approval of annexation on 02/21/02;**
- **Legislative review process ended on March 9, 2002.**



An aerial photograph of a town, likely in a mountainous region, with a large, densely forested hill in the background. The town features a mix of residential houses, commercial buildings, and parking lots. A major road runs through the center of the town. The text "Part II. Superior Court Decision." is overlaid in large, bold, black letters with a white outline.

# **Part II. Superior Court Decision.**



# **Appeals Filed in Superior Court**

- **Alaskans Opposed to Annexation;**
- **Citizens Concerned About Annexation;**
- **Abigail Fuller.**



# **Court Upheld LBC on 4 of 5** **Fundamental Points**

- 1. State law does not require a vote of KESA residents to approve annexation.**
- 2. KESA residents not denied due process.**
- 3. No conflict of interest on the part of LBC member.**
- 4. Documents withheld by City under deliberative process privilege claim did not render injustice.**



An aerial photograph of a town, likely KESA, with a large, densely forested hill in the background. The town features various residential and commercial buildings, roads, and green spaces. The text is overlaid on the center of the image.

**However, Court concluded  
that LBC had erred by failing  
to consider impact of  
annexation on KESA.**





**“Appellants’ most troubling contention is that the LBC failed to consider the impact the annexation would have on the remaining territory of KESA.”**

**“They contend that Homer essentially ‘cherry-picked’ KESA.”**





**In *Keane v. LBC*, 893 P.2d 1239 (Alaska 1995), the Court remanded the case to the LBC to determine whether a particular standard had been met, since the Court could not ascertain from the record that the LBC had made such a determination.**





**“Appellees . . .  
admit to essentially  
dismissing any  
impact the Homer  
annexation would  
have on KESA.”**





**“The stated reason for the inattention is that the LBC and Homer maintain that KESA was formed illegally and thus did not deserve serious consideration.”**





**“Regardless of the motives of those who petitioned to form KESA, KESA was created and will continue to exist . . .”**





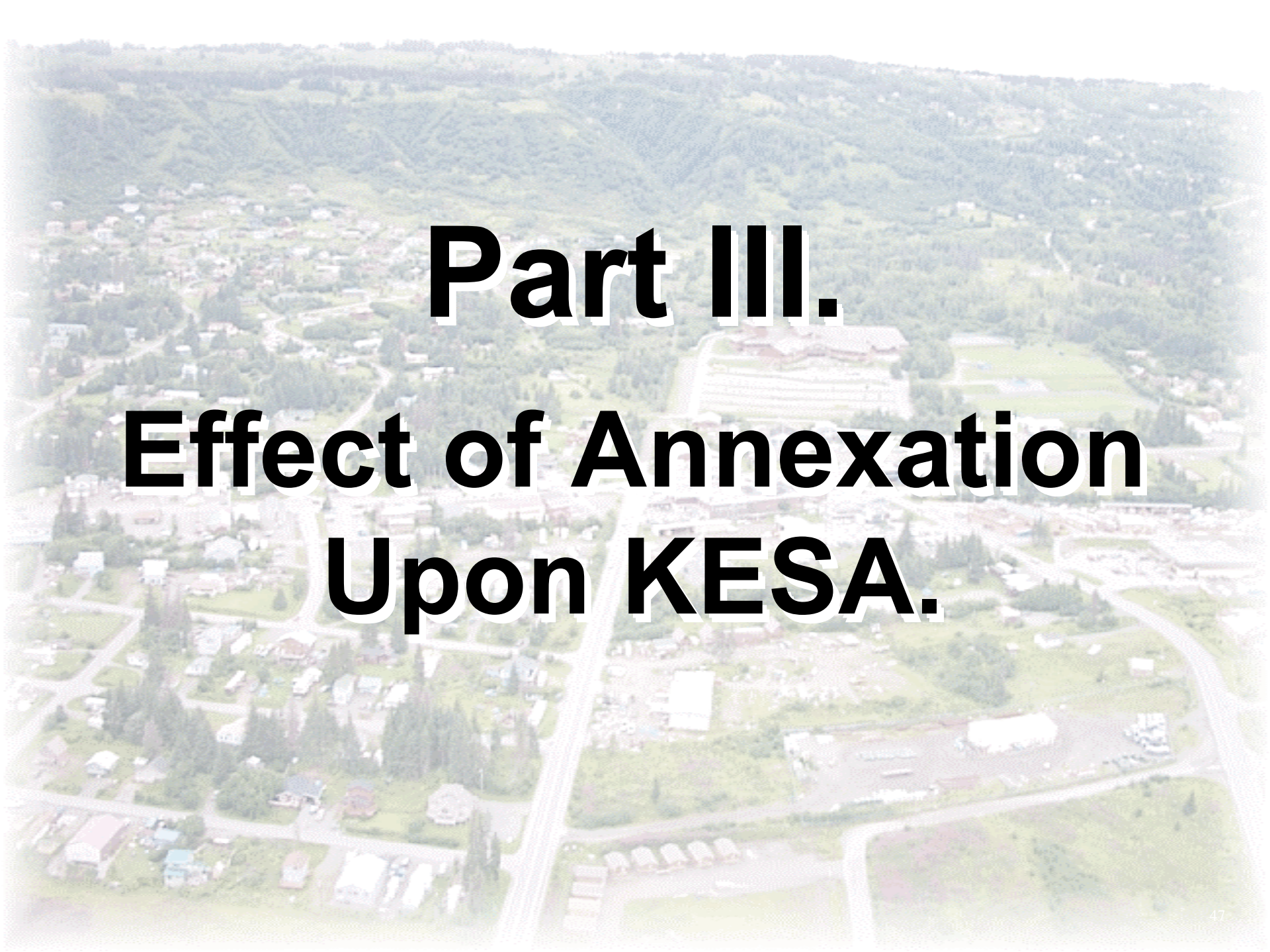
**“[A] discussion of the effect annexation would have on surrounding services (sic) areas, was warranted to ensure that the annexation was indeed in the best interests of the state.”**





**“There is no evidence that any such discussion ever occurred. Thus, a remand is appropriate to ensure that the LBC considers this issue.”**




An aerial photograph of a town, likely KESA, showing a large building complex in the center, surrounded by residential areas and green hills in the background. The text is overlaid on the image.

# **Part III.**

## **Effect of Annexation Upon KESA.**



An aerial photograph of a town, likely Kesa, showing a large stadium in the center, surrounded by residential areas and green hills in the background.

**The scope of this LBC hearing is narrow.**

**Superior Court remanded matter to the LBC to consider effect of annexation on KESA.**



# KESA Size:

**Pre-annexation: 218.95 square miles**

**Post-annexation: 214.37 square miles**

**Difference: 4.58 square miles  
(2.1 percent)**





# KESA

## Population:

**Pre-annexation: 5,032 residents**

**Post-annexation: 4,134 residents**

**Difference: 898 residents  
(17.8 percent)**



# KESA Population Density:

**Pre-annexation: 23.0 residents/mile<sup>2</sup>**

**Post-annexation: 19.3 residents/mile<sup>2</sup>**

**Difference: 3.7 residents/mi<sup>2</sup>  
(16.1 percent)**



# KESA Tax Base:

**Pre-annexation: \$238,585,300**

**Post-annexation \$177,162,069**

**Difference: \$61,423,231  
(25.7 percent)**



# KESA Per Capita Tax Base:

<b>Pre-annexation:</b>	<b>\$47,414/resident</b>
<b>Post-annexation:</b>	<b><u>\$42,855/resident</u></b>
<b>Difference:</b>	<b>\$4,559/resident (9.6 percent)</b>



# KESA Tax Base Density:

**Pre-annexation:** **\$1,089,679/mile<sup>2</sup>**

**Post-annexation:** **\$826,429/mile<sup>2</sup>**

**Difference:** **\$263,250 /mile<sup>2</sup>**  
**(24.2 percent)**



An aerial photograph of a town, likely in a mountainous region, showing a mix of residential houses, commercial buildings, and green spaces. A large, multi-story building with a red roof is prominent in the center. The town is surrounded by dense green forests and rolling hills.

# **Part IV.**

## **Staff's Conclusions and Recommendations.**



An aerial photograph of a town, likely in a mountainous region, with a large, densely forested hill in the background. The town features a mix of residential houses, commercial buildings, and parking lots. A major road runs through the center of the town. The text is overlaid on the image.

# **Part IV - A.**

## **Conclusions Regarding the Effect of Annexation on KESA.**





# **4.54 SQUARE MILE (2.1%) REDUCTION OF KESA IN CONTEXT**

- **KPB emergency-service service areas range in size from under 15 square miles to more than 5,000 square miles.**
- **Post-annexation KESA is in the mid-range.**



# KPB SERVICE AREA SIZE COMPARISONS:

Bear Creek:	14.95 miles <sup>2</sup>
Anchor Point:	127.98 miles <sup>2</sup>
<b>KESA Post-annexation:</b>	<b>214.37 miles<sup>2</sup></b>
<b>KESA Pre-annexation:</b>	<b>218.95 miles<sup>2</sup></b>
Central Emergency:	886.35 miles <sup>2</sup>
Central EMS:	1,232.47 miles <sup>2</sup>
Nikiski:	5,479.81 miles <sup>2</sup>

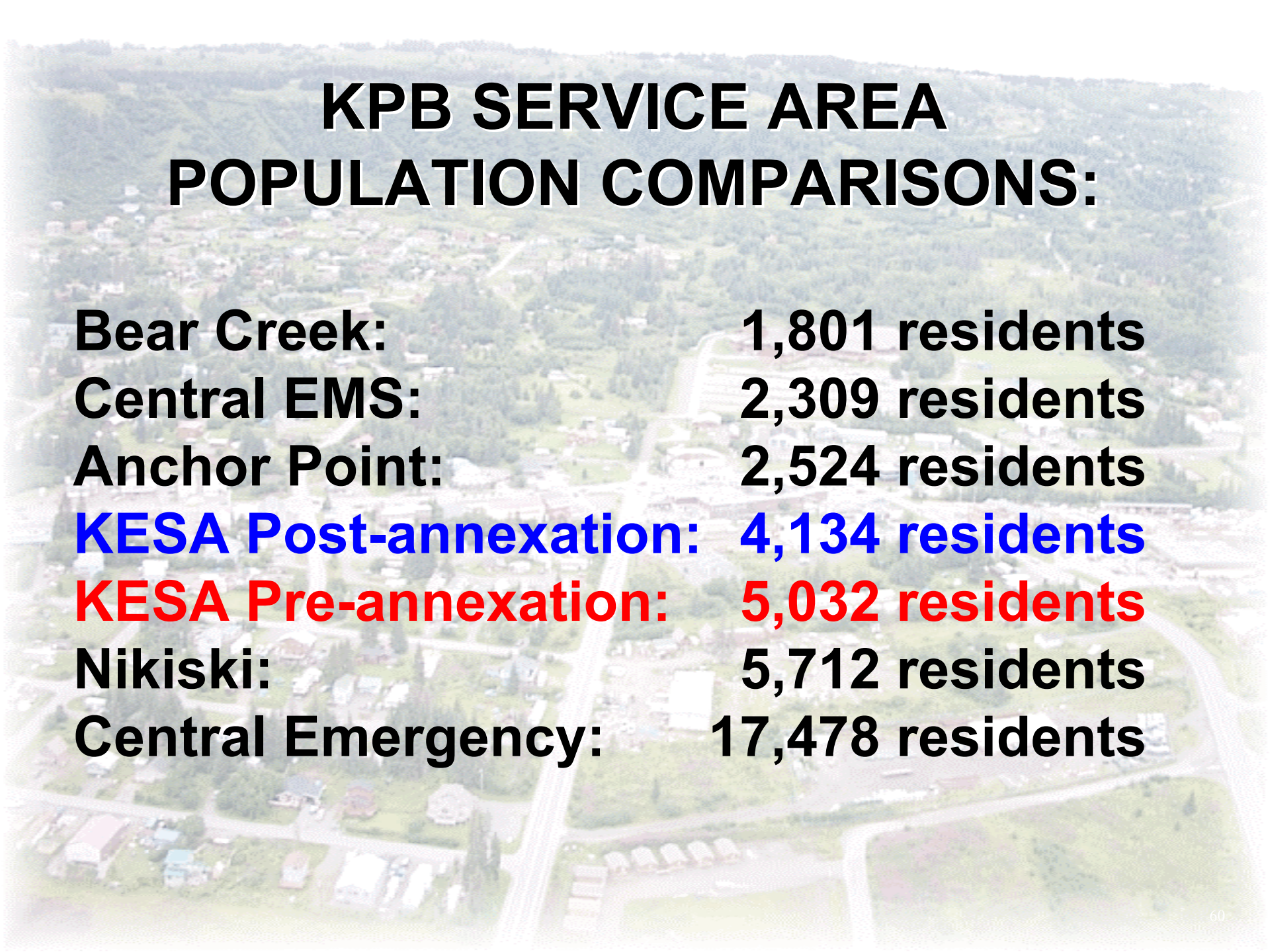


# **17.8% POPULATION REDUCTION (898 RESIDENTS) IN CONTEXT**

- **KPB emergency-service service areas range in population from just over 1,800 residents to more than 17,000 residents.**
- **Post-annexation KESA is in the mid-range.**



# KPB SERVICE AREA POPULATION COMPARISONS:



<b>Bear Creek:</b>	<b>1,801 residents</b>
<b>Central EMS:</b>	<b>2,309 residents</b>
<b>Anchor Point:</b>	<b>2,524 residents</b>
<b>KESA Post-annexation:</b>	<b>4,134 residents</b>
<b>KESA Pre-annexation:</b>	<b>5,032 residents</b>
<b>Nikiski:</b>	<b>5,712 residents</b>
<b>Central Emergency:</b>	<b>17,478 residents</b>

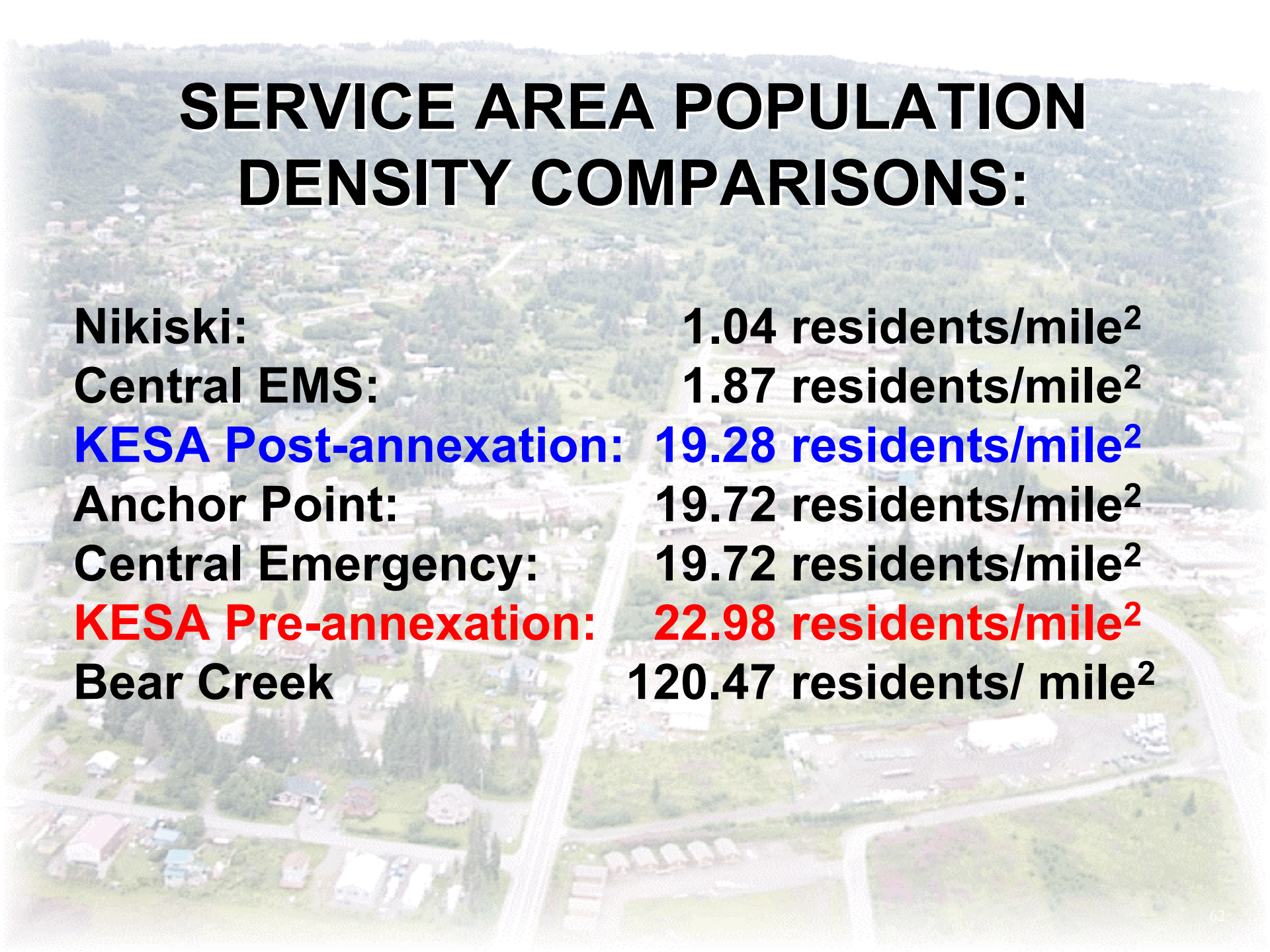


# **16.1% POPULATION DENSITY REDUCTION OF KESA IN CONTEXT**

- **KPB emergency-service service areas range in population density from slightly more than 1 person per square mile to more than 120 people per square mile.**
- **Post-annexation KESA is in the mid-range.**



# SERVICE AREA POPULATION DENSITY COMPARISONS:



Nikiski:	1.04 residents/mile <sup>2</sup>
Central EMS:	1.87 residents/mile <sup>2</sup>
<b>KESA Post-annexation:</b>	<b>19.28 residents/mile<sup>2</sup></b>
Anchor Point:	19.72 residents/mile <sup>2</sup>
Central Emergency:	19.72 residents/mile <sup>2</sup>
<b>KESA Pre-annexation:</b>	<b>22.98 residents/mile<sup>2</sup></b>
Bear Creek	120.47 residents/ mile <sup>2</sup>



# **25.7% PROPERTY TAX BASE REDUCTION IN CONTEXT**

- **Value of property that KESA must serve also declined by 25.7 percent.**
- **Tax bases of KPB emergency-service service areas range from \$83.1 million to \$1.2 billion.**
- **Post-annexation KESA is in the mid-range.**



# KPB SERVICE AREA 2002 TAX BASE COMPARISONS:

<b>Bear Creek:</b>	<b>\$83,142,052</b>
<b>Anchor Point:</b>	<b>\$128,878,208</b>
<b>Central EMS:</b>	<b>\$137,770,239</b>
<b>KESA Post-annexation:</b>	<b>\$177,162,069</b>
<b>KESA Pre-annexation:</b>	<b>\$238,585,300</b>
<b>Central Emergency:</b>	<b>\$1,043,970,293</b>
<b>Nikiski:</b>	<b>\$1,286,557,871</b>



# **9.6% PER CAPITA PROPERTY TAX BASE REDUCTION IN CONTEXT**

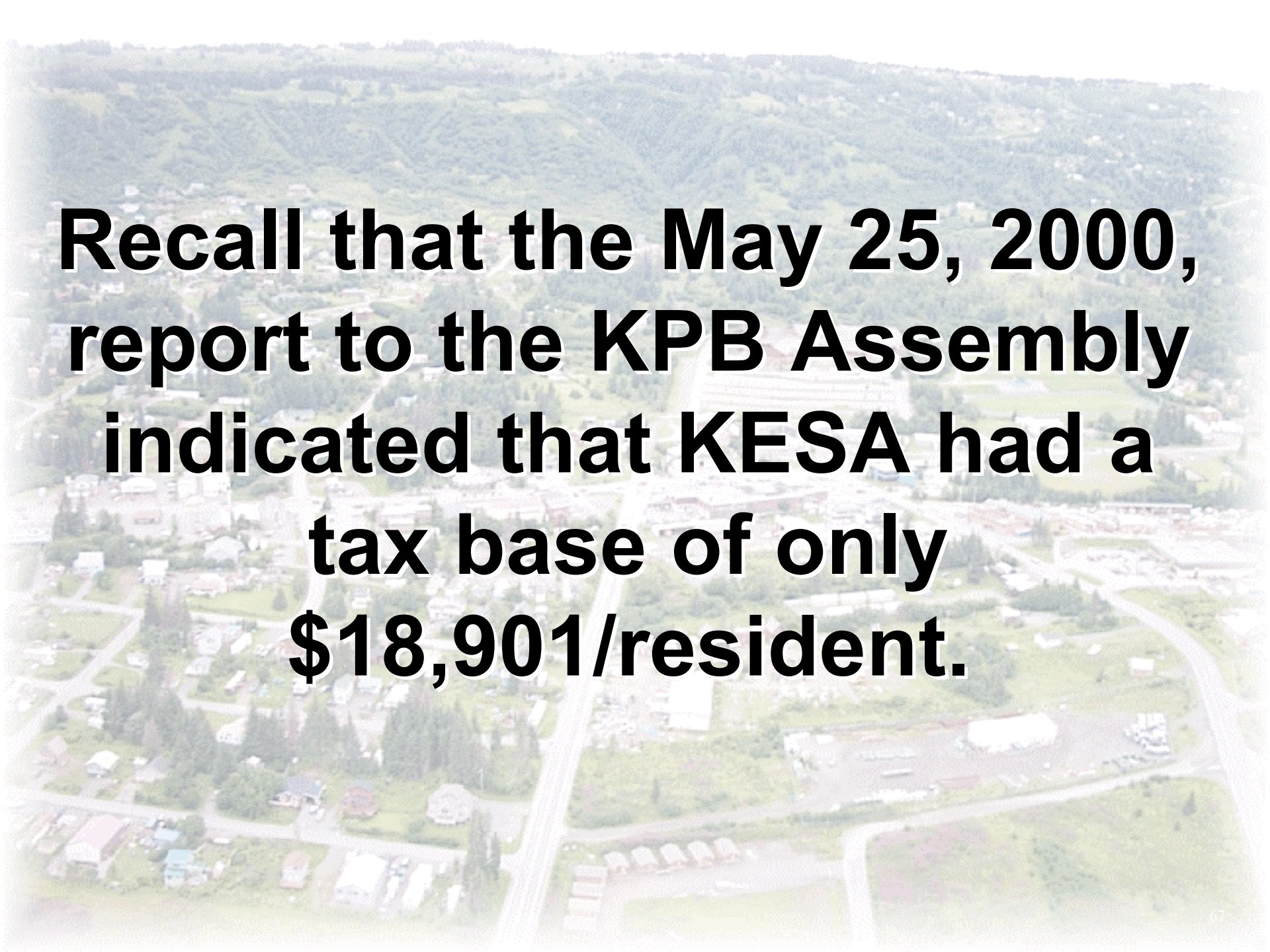
- **Per capita tax base of KPB emergency-service service areas ranges from nearly \$43,000 to more than \$225,000.**
- **Post-annexation KESA is comparable to Bear Creek Service Area.**



# SERVICE AREA PER CAPITA TAX BASE COMPARISONS:

<b>KESA Post-annexation:</b>	<b>\$42,855/resident</b>
<b>Bear Creek:</b>	<b>\$46,164/resident</b>
<b>KESA Pre-annexation:</b>	<b>\$47,414/resident</b>
<b>Anchor Point:</b>	<b>\$51,061/resident</b>
<b>Central EMS:</b>	<b>\$59,667/resident</b>
<b>Central Emergency:</b>	<b>\$59,731/resident</b>
<b>Nikiski:</b>	<b>\$225,238/resident</b>



An aerial photograph of a town, likely Ketchikan, Alaska, with a large, densely forested hill in the background. The town features residential areas with houses and streets, as well as commercial areas with larger buildings and parking lots. The text is overlaid on the image in a large, bold, black font with a white outline.

**Recall that the May 25, 2000,  
report to the KPB Assembly  
indicated that KESA had a  
tax base of only  
\$18,901/resident.**



# **24.2% REDUCTION OF KESA TAX BASE DENSITY IN CONTEXT**

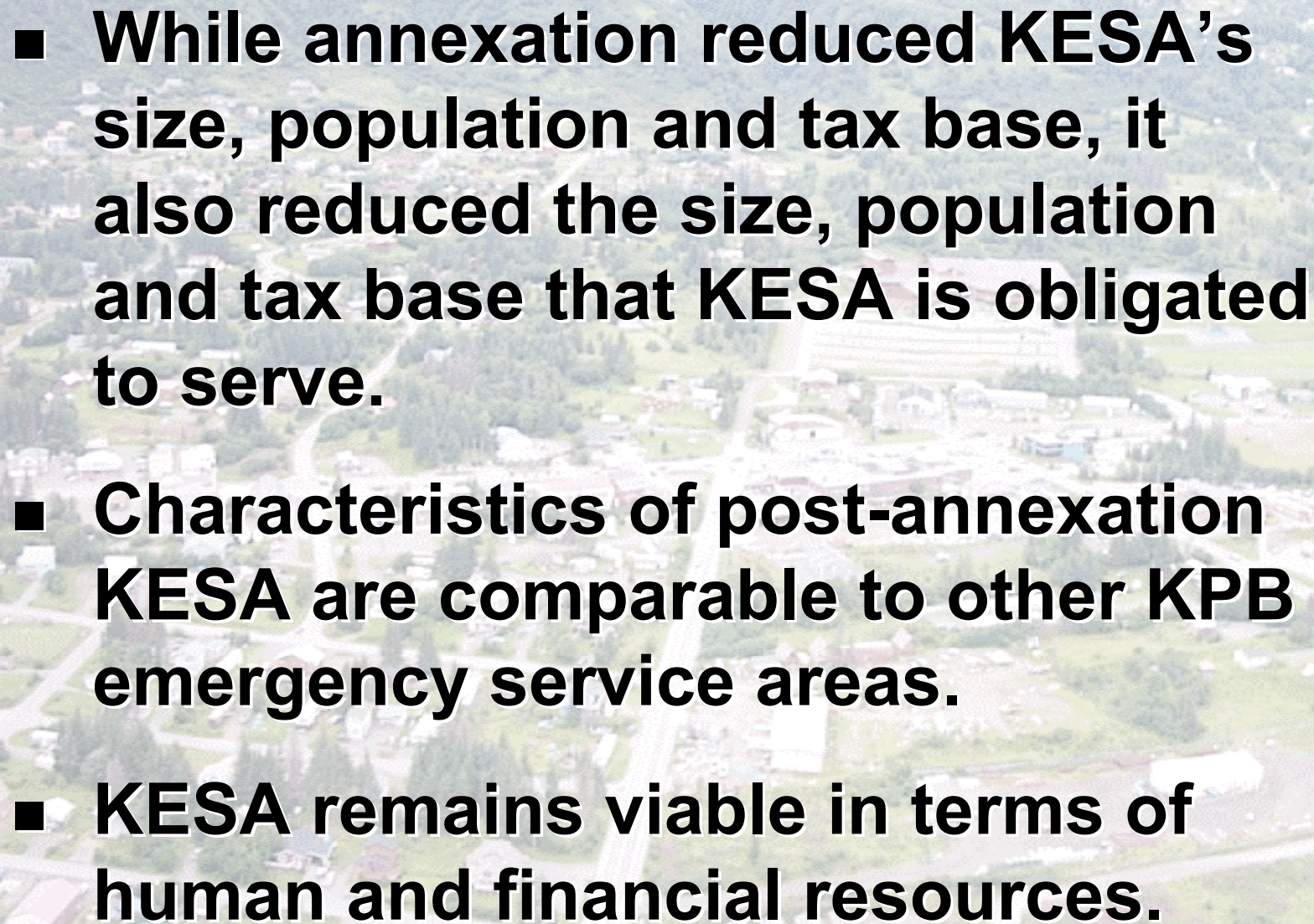
- **Tax base density of KPB emergency-service service areas ranges from nearly \$112,00 per square mile to more than \$5.5 million per square mile.**
- **Post-annexation KESA is in mid-range.**



# SERVICE AREA TAX BASE DENSITY COMPARISONS:

Central EMS:	\$111,784/mi <sup>2</sup>
Nikiski:	\$234,782/mi <sup>2</sup>
<b>KESA Post-annexation:</b>	<b>\$826,429/mi<sup>2</sup></b>
Anchor Point:	\$1,007,011/mi <sup>2</sup>
<b>KESA Pre-annexation:</b>	<b>\$1,089,679/mi<sup>2</sup></b>
Central Emergency:	\$1,177,830/mi <sup>2</sup>
Bear Creek:	\$5,561,341/mi <sup>2</sup>



- 
- **While annexation reduced KESA's size, population and tax base, it also reduced the size, population and tax base that KESA is obligated to serve.**
  - **Characteristics of post-annexation KESA are comparable to other KPB emergency service areas.**
  - **KESA remains viable in terms of human and financial resources.**

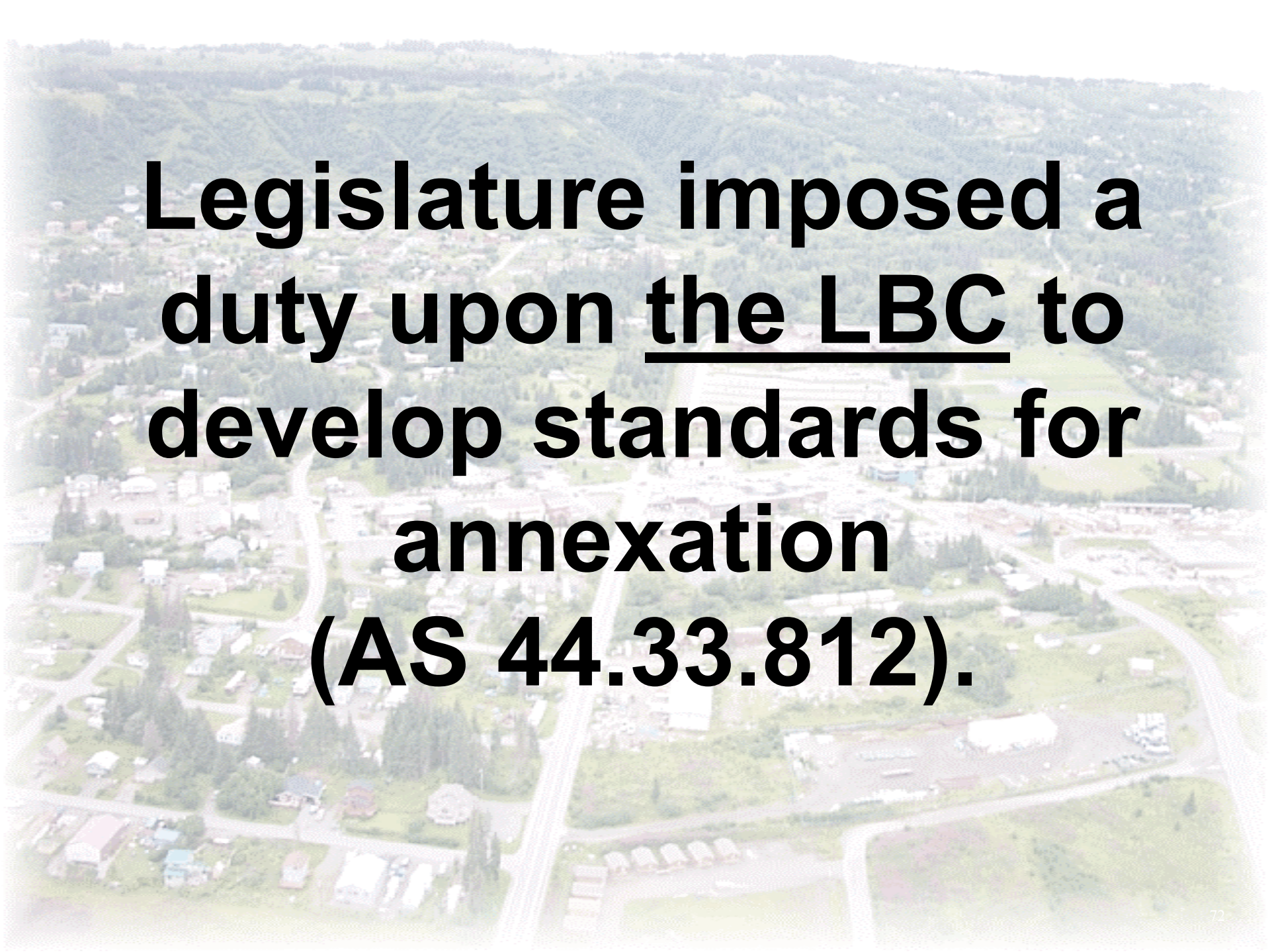


An aerial photograph of a town, likely in a mountainous region, with a large, forested hill in the background. The town features a mix of residential houses, commercial buildings, and parking lots. A major road runs through the center of the town. The text is overlaid on the image.

# **Part IV - B.**

## **Conclusions Regarding the Standard Imposed by the Court.**



An aerial photograph of a town, likely in Alaska, showing residential areas, commercial buildings, and a large parking lot. In the background, a densely forested hill rises. The text is overlaid on this image.

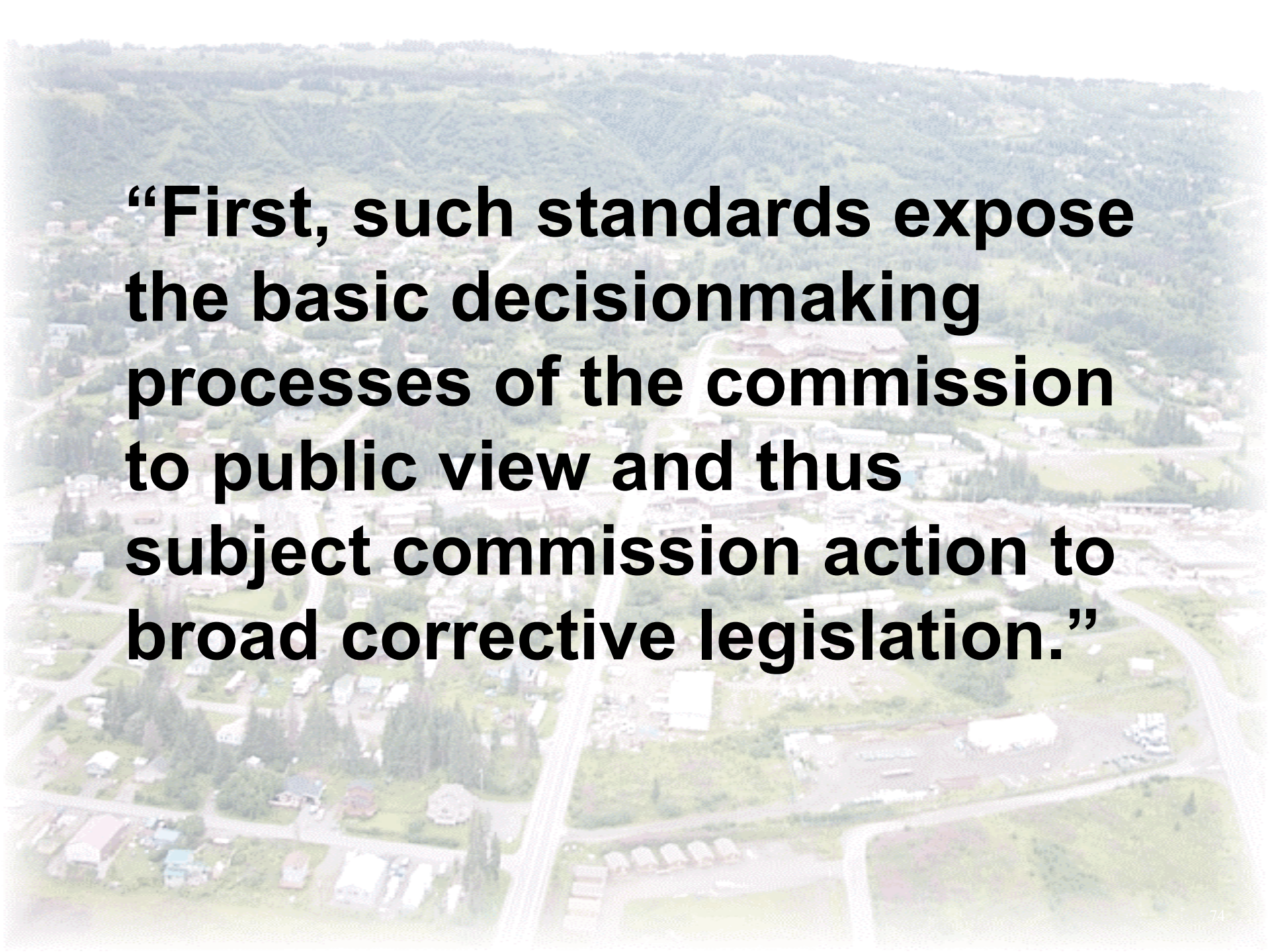
**Legislature imposed a  
duty upon the LBC to  
develop standards for  
annexation  
(AS 44.33.812).**



An aerial photograph of a town, likely in Alaska, showing residential houses, commercial buildings, and a large parking lot. In the background, a large, forested hill rises above the town. The text is overlaid on the image in a large, bold, black font.

**Thirty years ago,  
Alaska Supreme Court  
identified three  
fundamental reasons  
for LBC standards.**



An aerial photograph of a town, likely in a mountainous region, with a large, densely forested hill in the background. The town features a mix of residential houses, commercial buildings, and parking lots. A road runs through the center of the town. The text is overlaid on the image in a large, bold, black font.

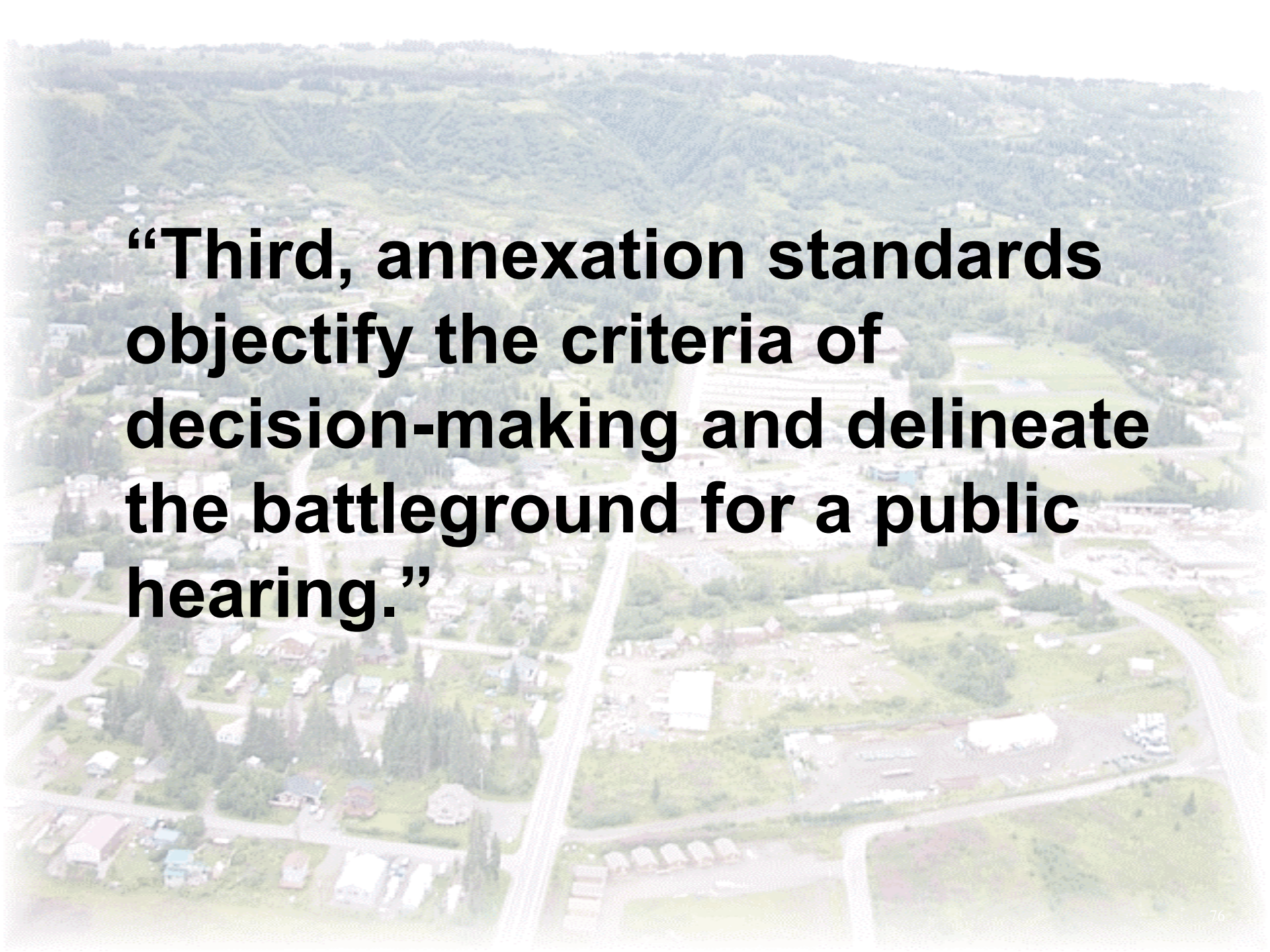
**“First, such standards expose the basic decisionmaking processes of the commission to public view and thus subject commission action to broad corrective legislation.”**



An aerial photograph of a town, likely in a mountainous region, with a large, densely forested hill in the background. The town features a mix of residential houses, commercial buildings, and parking lots. A road runs through the center of the town. The text is overlaid on the left side of the image.

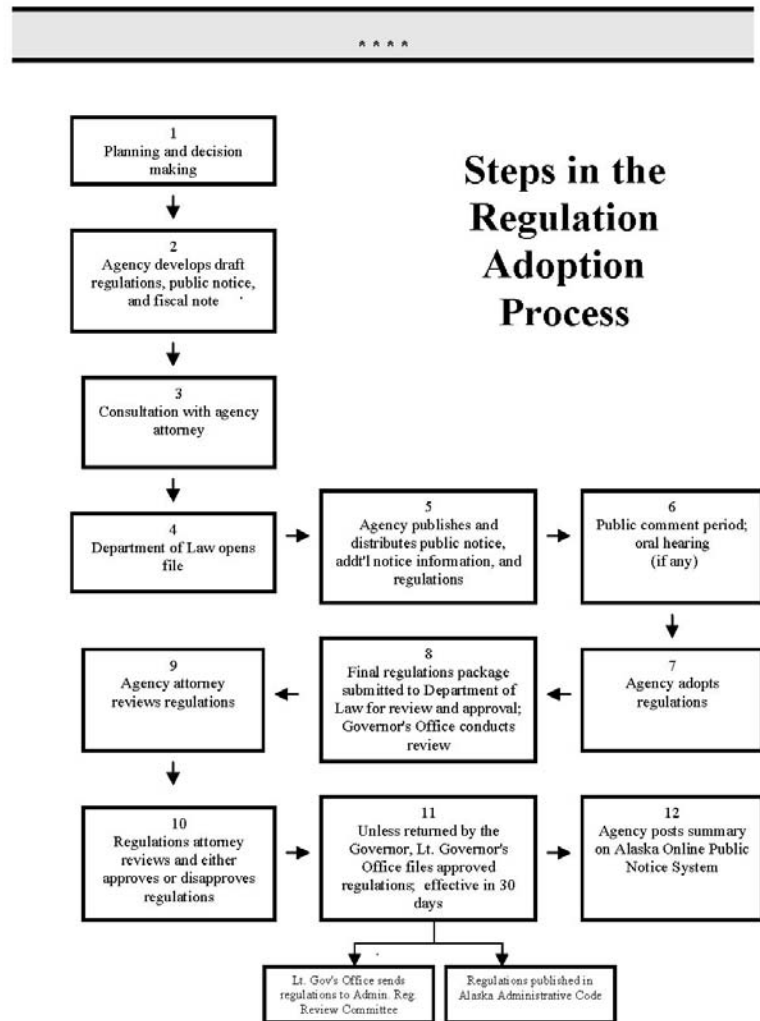
**“Second, the standards guide local governments in making annexation decisions and in preparing proposals for the commission.”**



An aerial photograph of a suburban town. In the foreground, there are residential neighborhoods with houses and trees. A major road runs vertically through the center. To the right, there's a commercial area with a large parking lot and some industrial buildings. In the background, a large, densely forested hill rises above the town. The text is overlaid on the left side of the image.

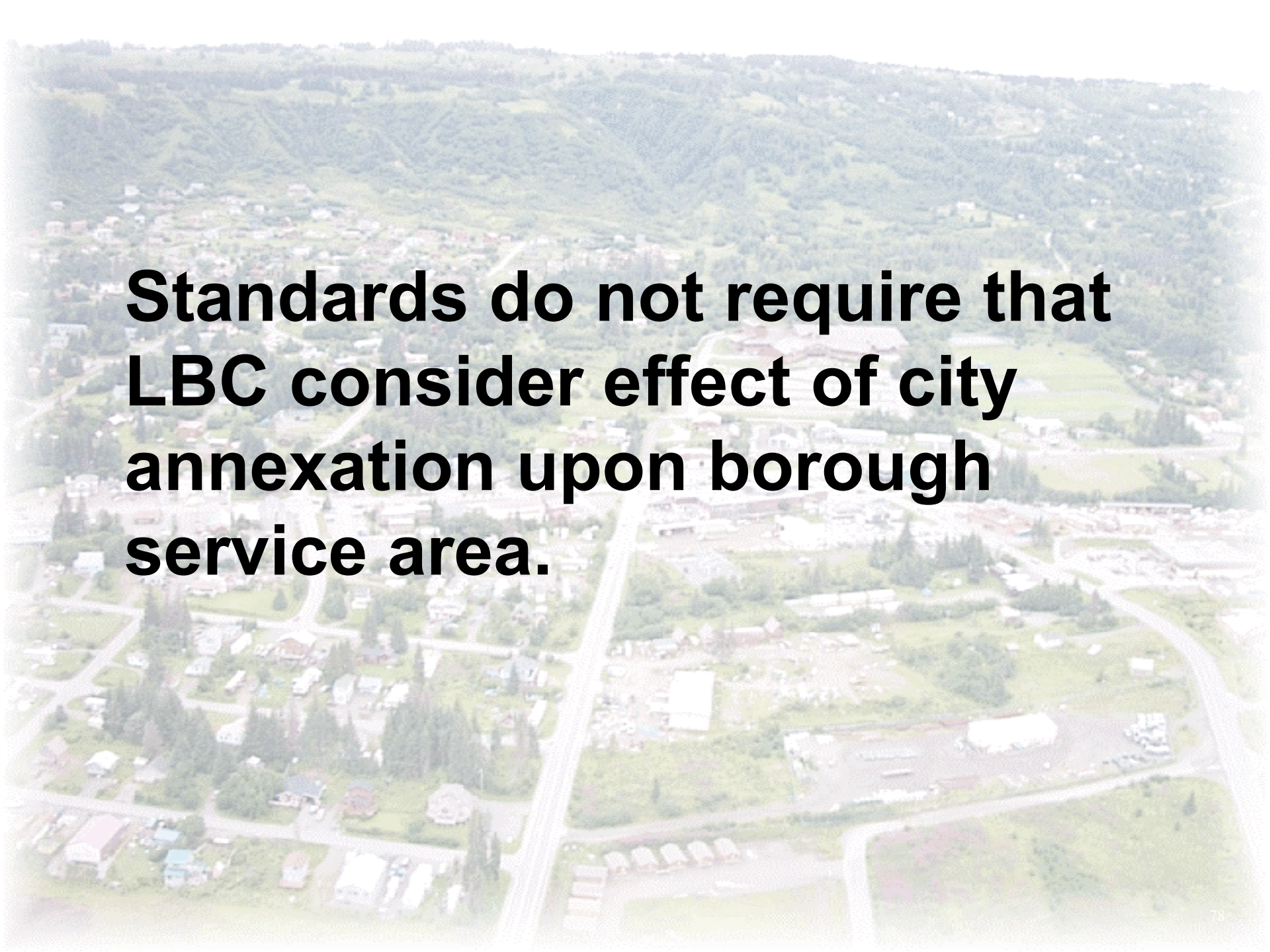
**“Third, annexation standards objectify the criteria of decision-making and delineate the battleground for a public hearing.”**





**LBC standards  
were adopted  
under the  
Administrative  
Procedure Act,  
which allows for  
input from others.**



An aerial photograph of a town, likely in a mountainous region, with a large, densely forested hill in the background. The town features a mix of residential houses, commercial buildings, and parking lots. A major road runs through the center of the town. The text is overlaid on the left side of the image.

**Standards do not require that  
LBC consider effect of city  
annexation upon borough  
service area.**



# 12/26/01 Decision

“In other proceedings, the [LBC] has largely ignored increases in borough services within an area proposed for city annexation if the changes were made only recently and if they appeared to have been motivated, in part, by an effort to weaken the merits of an annexation proposal.”

**Recall that LBC expressly stated in this case that it “largely ignored” such matters.**

**LBC Decisional Statement, p. 30.**



An aerial photograph of a town, likely in a mountainous region. A large, multi-story building with a red roof is prominent in the center. The town is surrounded by dense green forests and rolling hills. A road runs through the town, and various smaller buildings and parking lots are visible. The text is overlaid on the left side of the image.

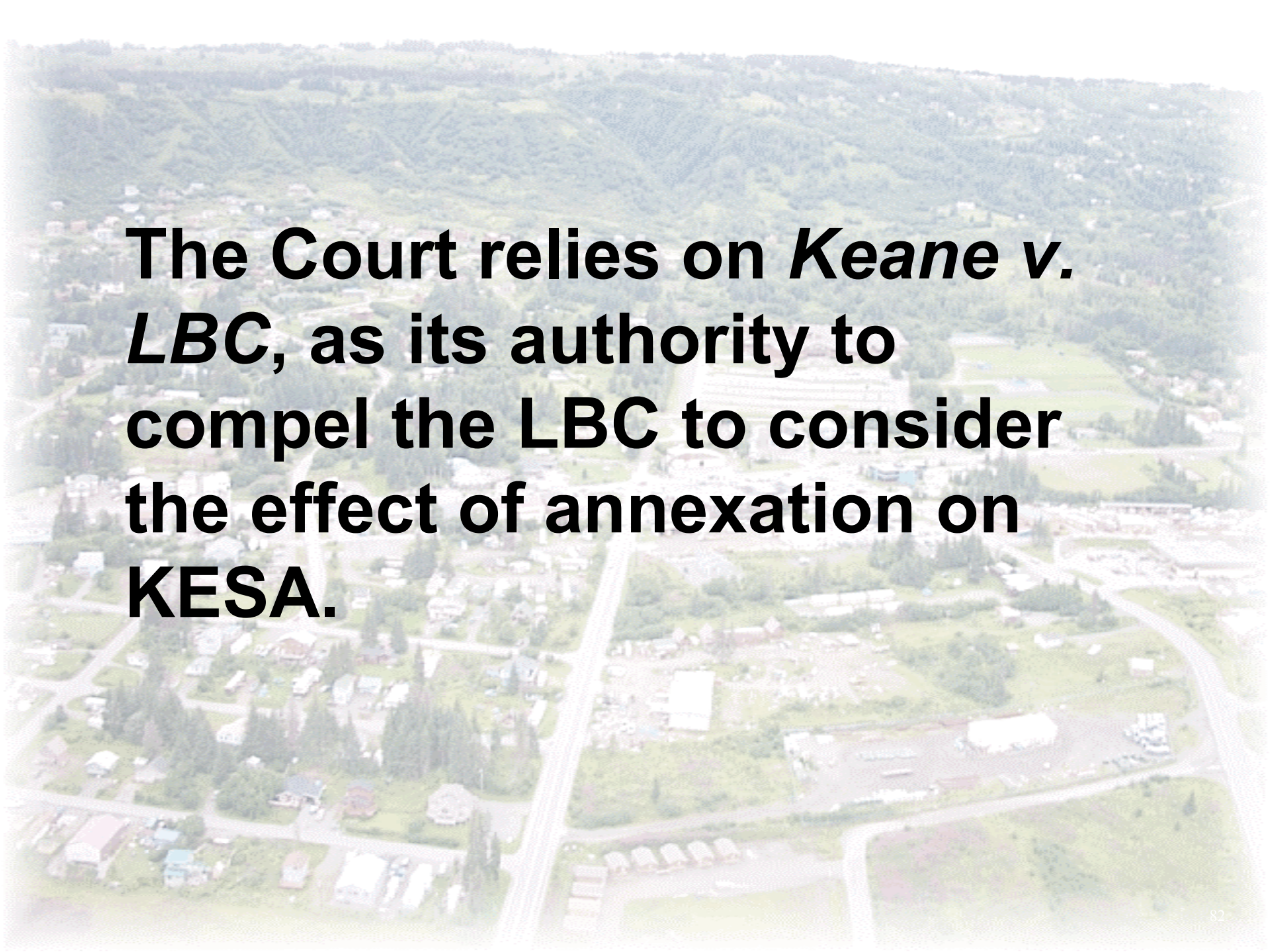
**Here, the Court has  
substituted its judgment for  
that of the LBC.**





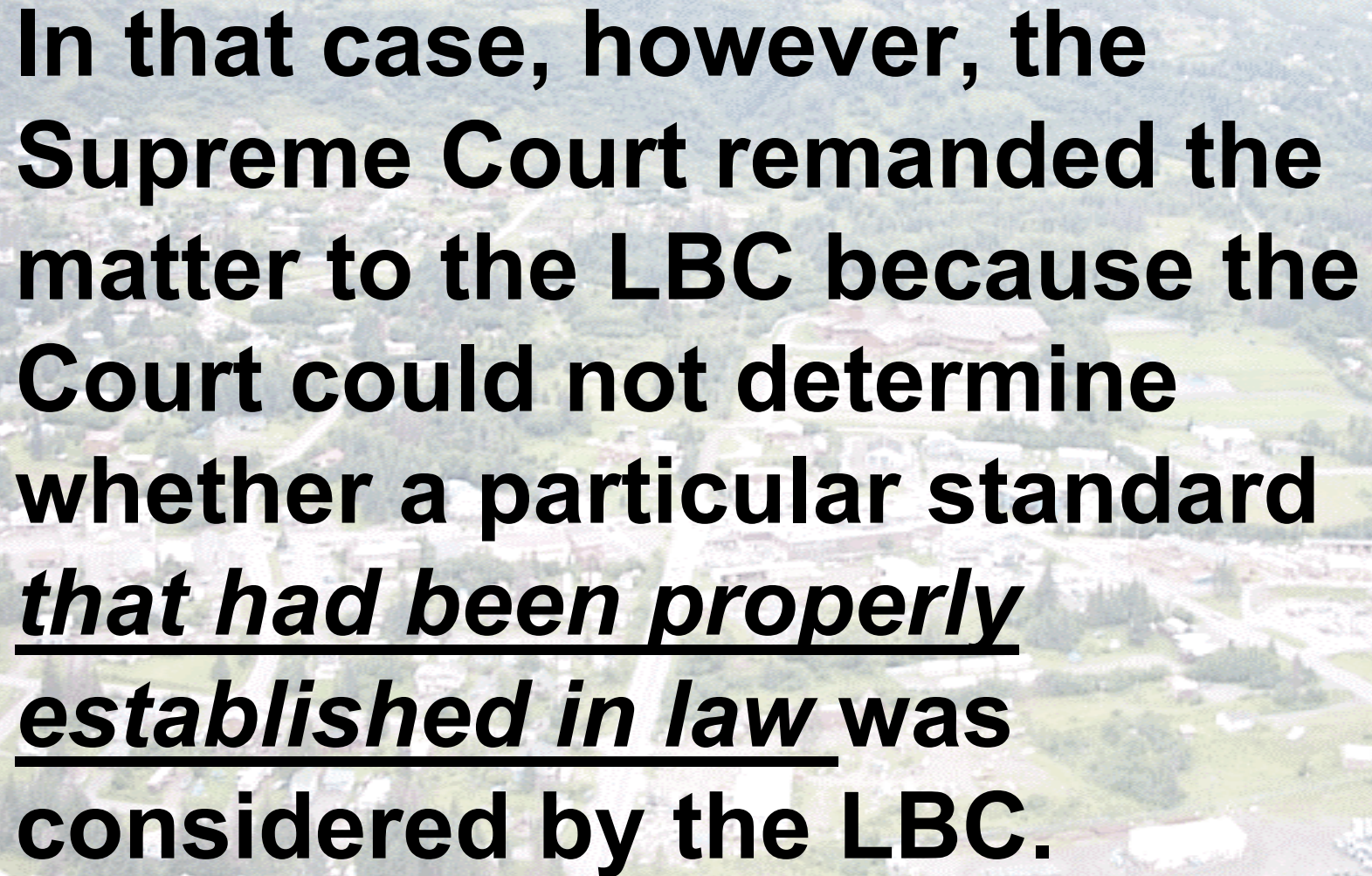
**“There is no evidence that any [discussion of the effect of annexation on KESA] ever occurred. Thus, a remand is appropriate to ensure that the LBC considers this issue.”**



An aerial photograph of a town, likely Kesa, with a large, densely forested hill in the background. The town features residential areas with houses and trees, as well as commercial areas with larger buildings and parking lots. A road runs through the center of the town. The text is overlaid on the left side of the image.


**The Court relies on *Keane v. LBC*, as its authority to compel the LBC to consider the effect of annexation on KESA.**



An aerial photograph of a suburban neighborhood serves as the background. It shows a mix of residential houses with various roof colors, green lawns, and mature trees. A paved road with a white center line runs diagonally through the scene. In the distance, a line of trees marks the edge of the developed area.

**In that case, however, the Supreme Court remanded the matter to the LBC because the Court could not determine whether a particular standard that had been properly established in law was considered by the LBC.**



An aerial photograph of a suburban town. In the center, there is a large, multi-story school building with a red roof and a large parking lot. The town is surrounded by green hills and residential areas with houses and streets. The text is overlaid on the image.

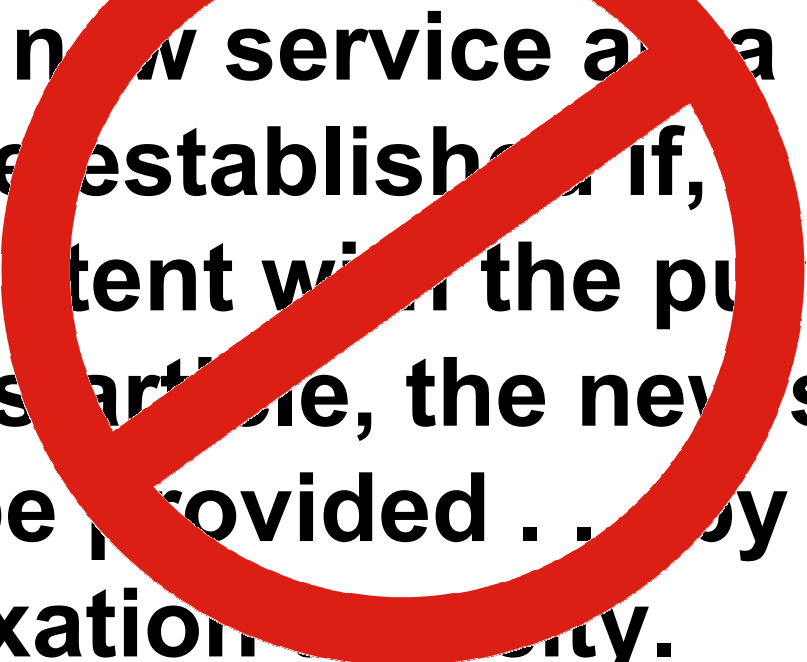
**Here, the Court is imposing a  
*new standard.***

**In this case, the new standard  
nullifies the constitutional and  
statutory preference for city  
annexation over creation of a  
new service area.**



# **Alaska Constitution Art. X, Sec. 5. Service Areas.**

**... A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided . . . by annexation to a city.**

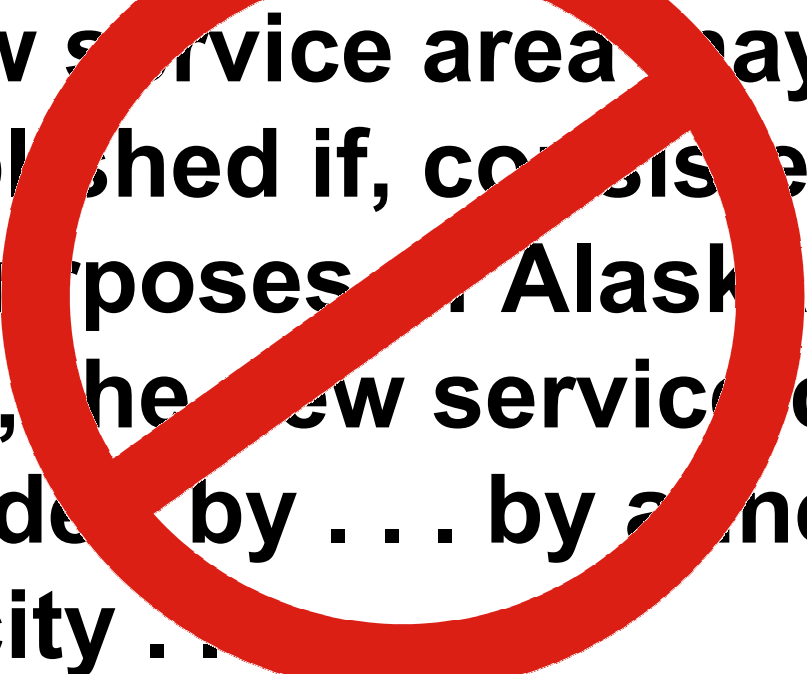




# **Alaska Statutes**

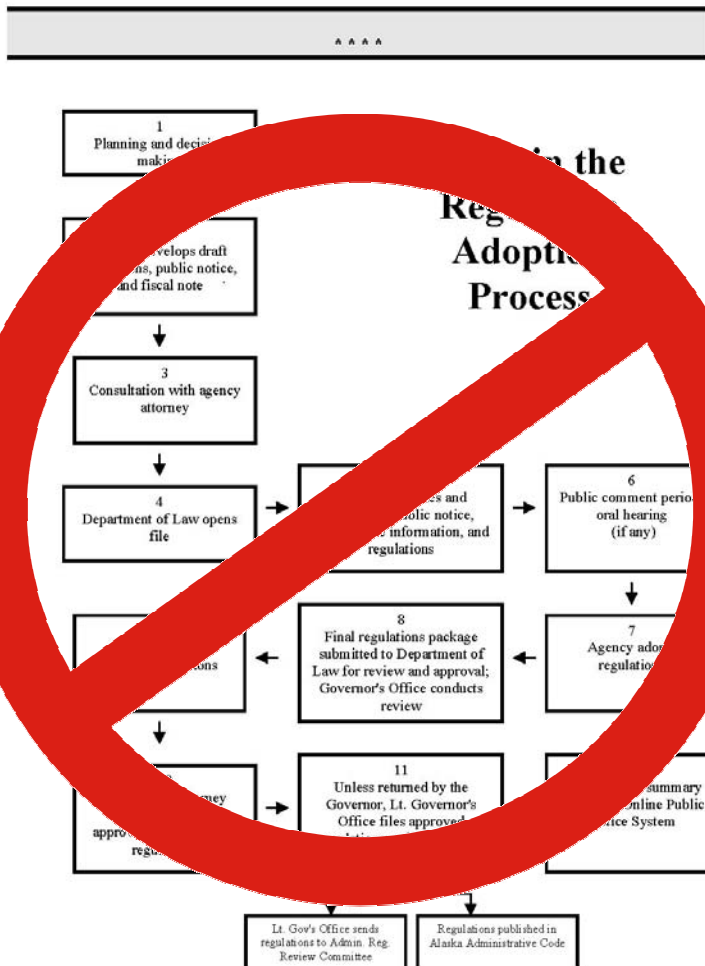
## **Sec. 29.35.450(b)**

**A new service area may not be established if, consistent with the purposes of Alaska Const., art. X, the new service can be provided by . . . by annexation to a city . . .**

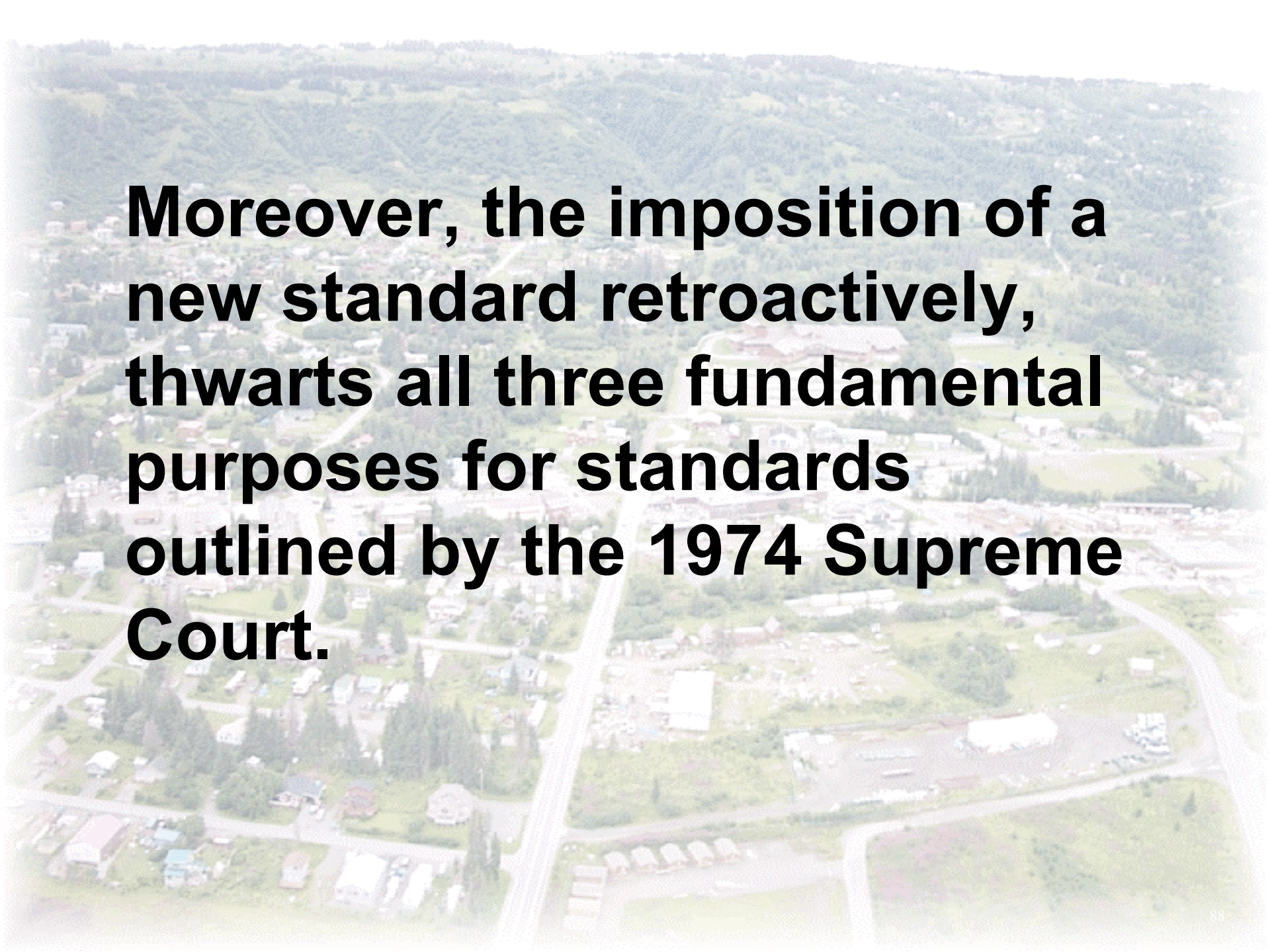




**Further, the new standard has not been subjected to the public process set out in the Administrative Procedure Act.**

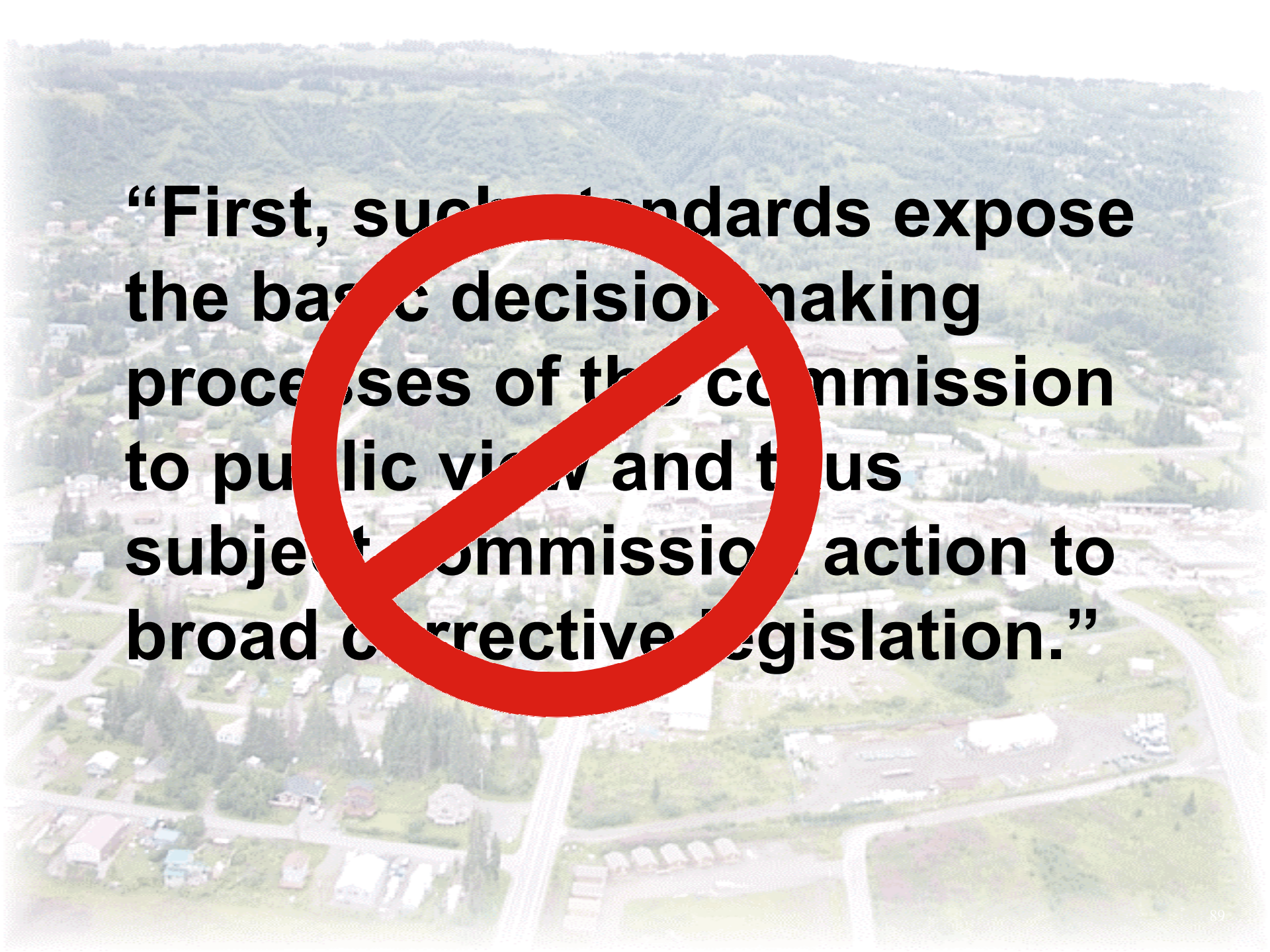






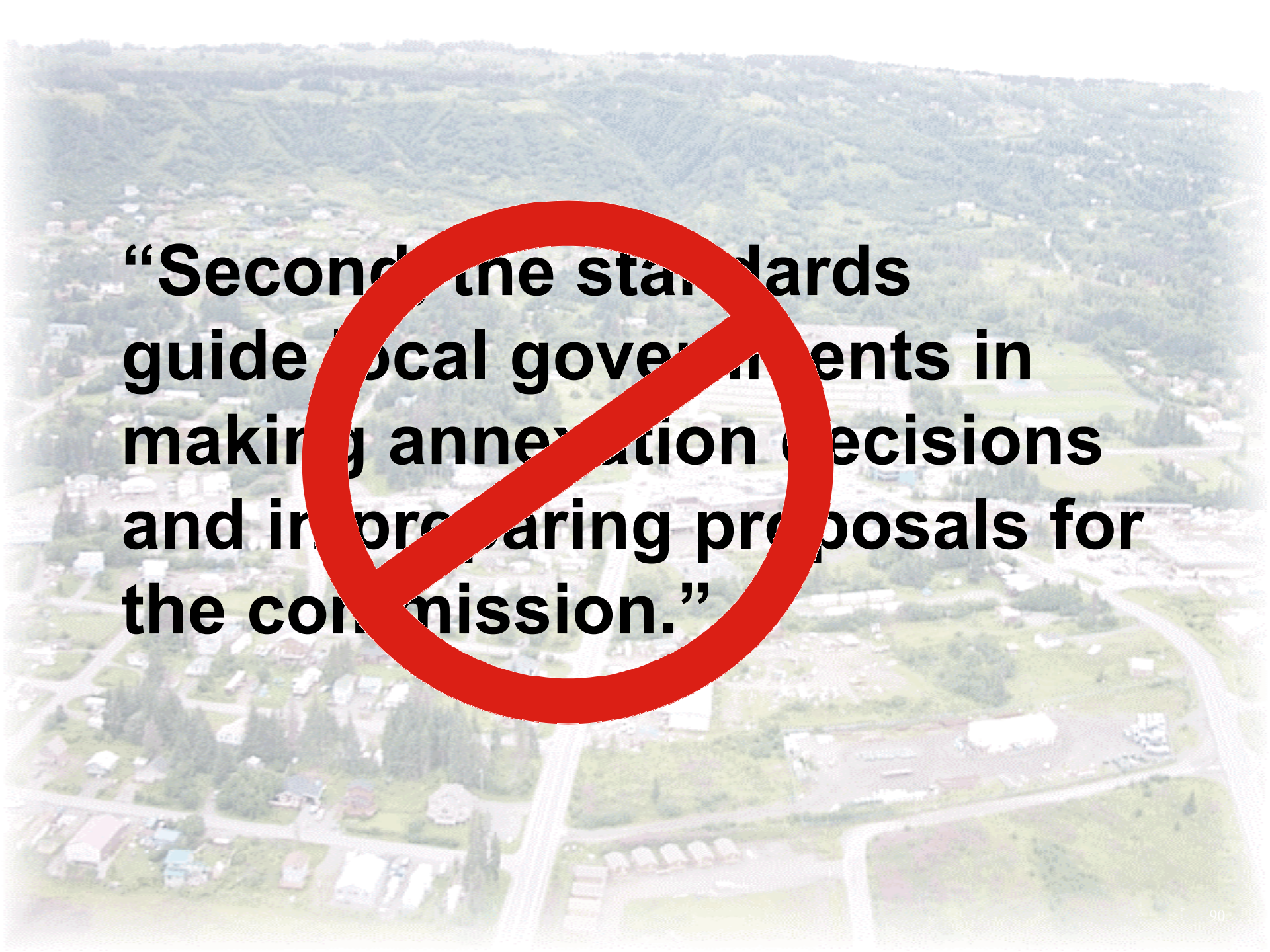
**Moreover, the imposition of a new standard retroactively, thwarts all three fundamental purposes for standards outlined by the 1974 Supreme Court.**



An aerial photograph of a suburban neighborhood with houses, streets, and green spaces. A large, thick red prohibition symbol (a circle with a diagonal slash) is centered over the text, indicating that the statement is negated or incorrect.

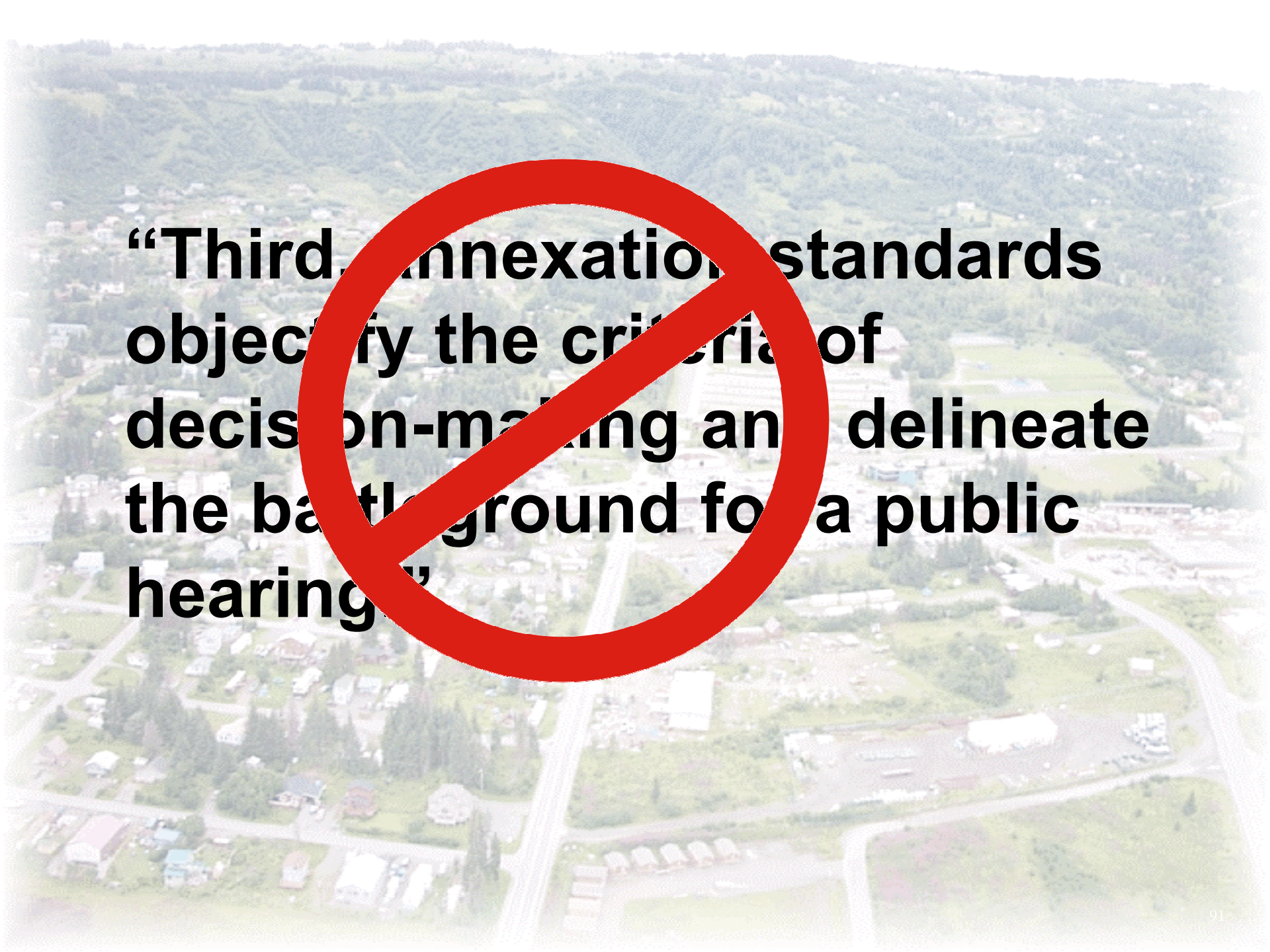
**“First, such standards expose the basic decision making processes of the commission to public view and thus subject commission action to broad corrective legislation.”**



An aerial photograph of a town with a large red prohibition symbol (a circle with a diagonal line) overlaid on the text. The background shows a town with various buildings, roads, and green spaces, with a forested hill in the background.

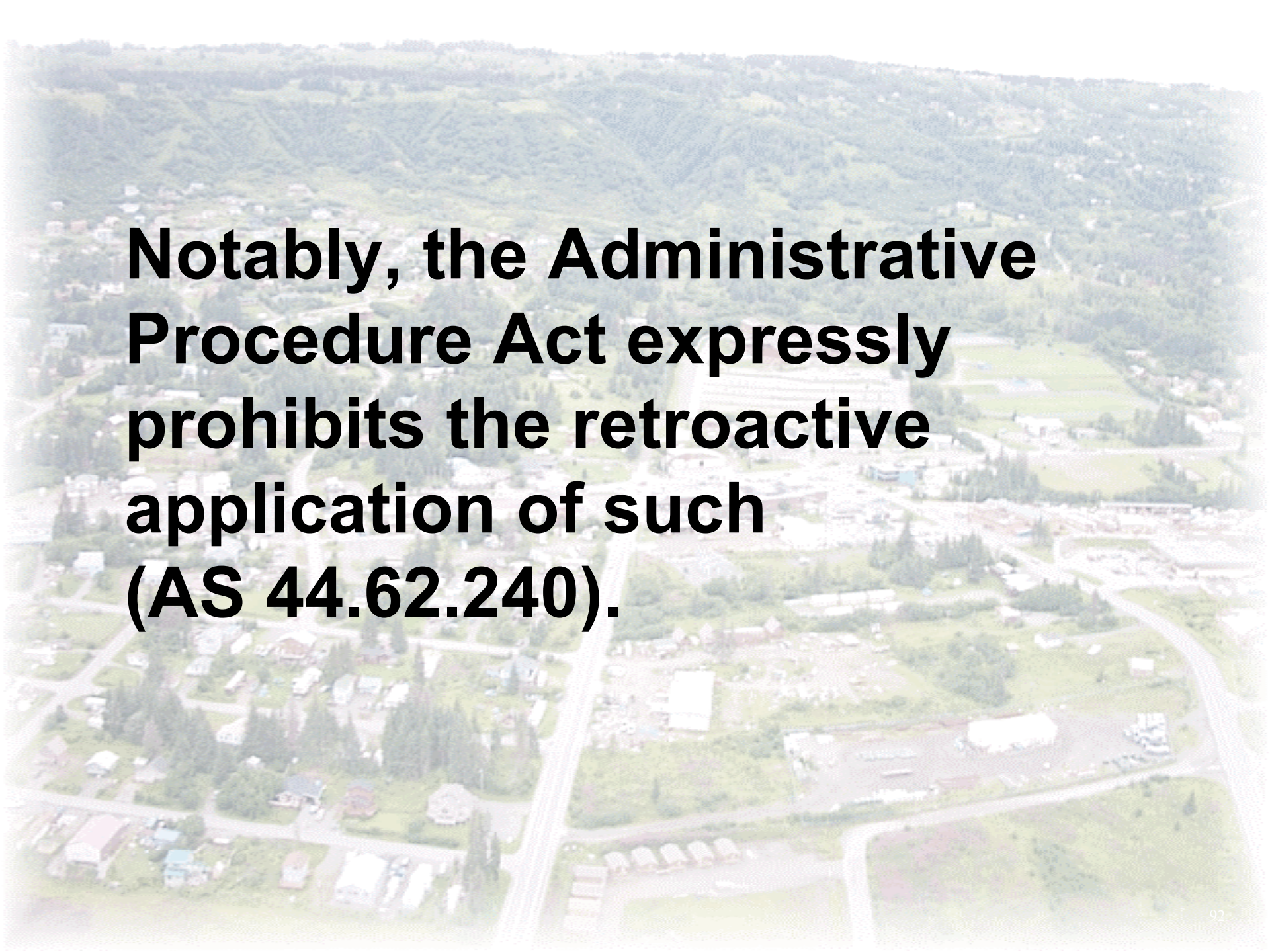
**“Second, the standards  
guide local governments in  
making annexation decisions  
and in preparing proposals for  
the commission.”**



An aerial photograph of a suburban neighborhood with houses, streets, and green spaces. A large red prohibition symbol (a circle with a diagonal line) is overlaid on the text.

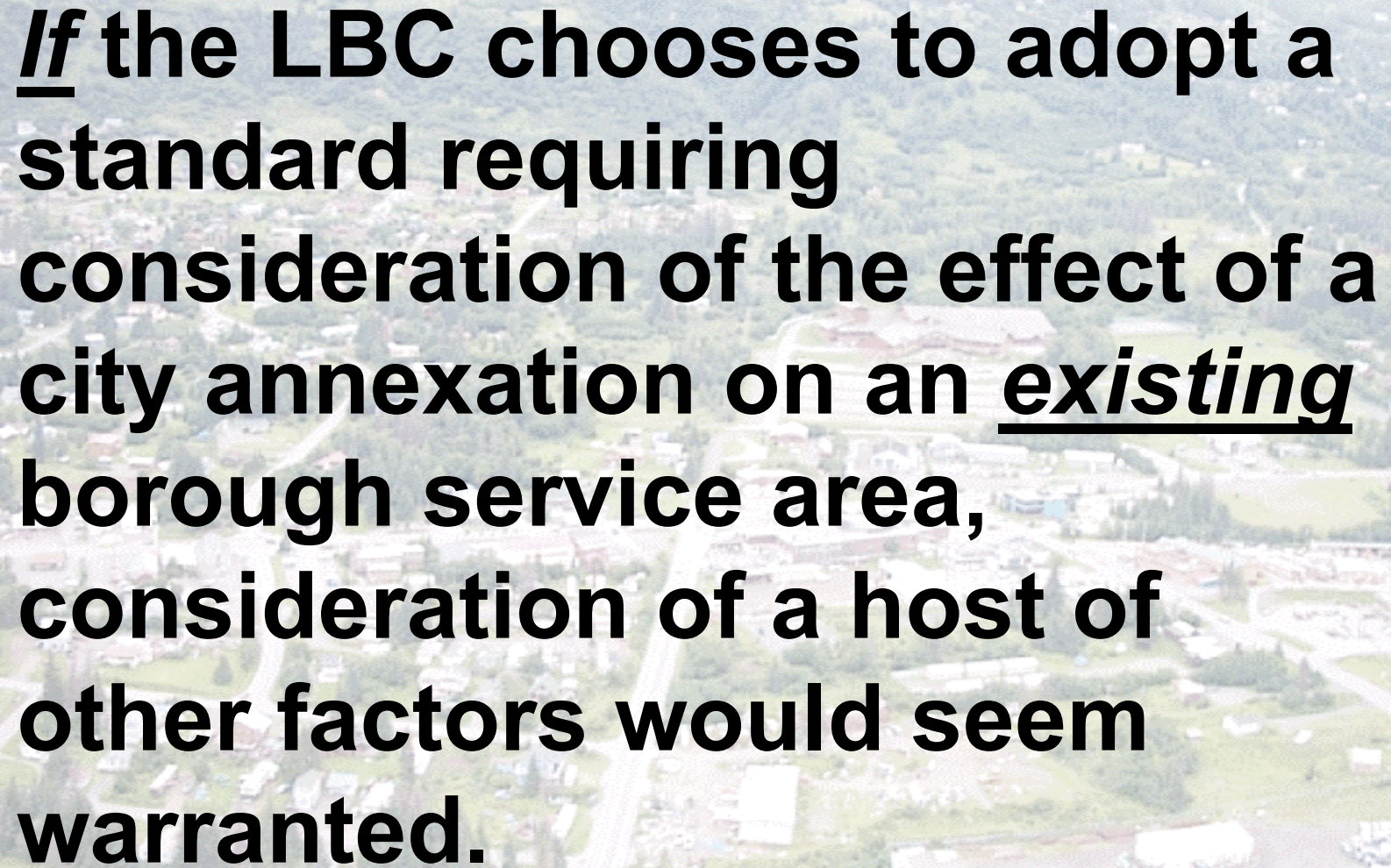
**“Third, annexation standards  
objectify the criteria of  
decision-making and delineate  
the battleground for a public  
hearing.”**



An aerial photograph of a town, likely in Alaska, showing residential areas, commercial buildings, and a large parking lot. In the background, a large, forested hill rises above the town. The text is overlaid on the left side of the image.

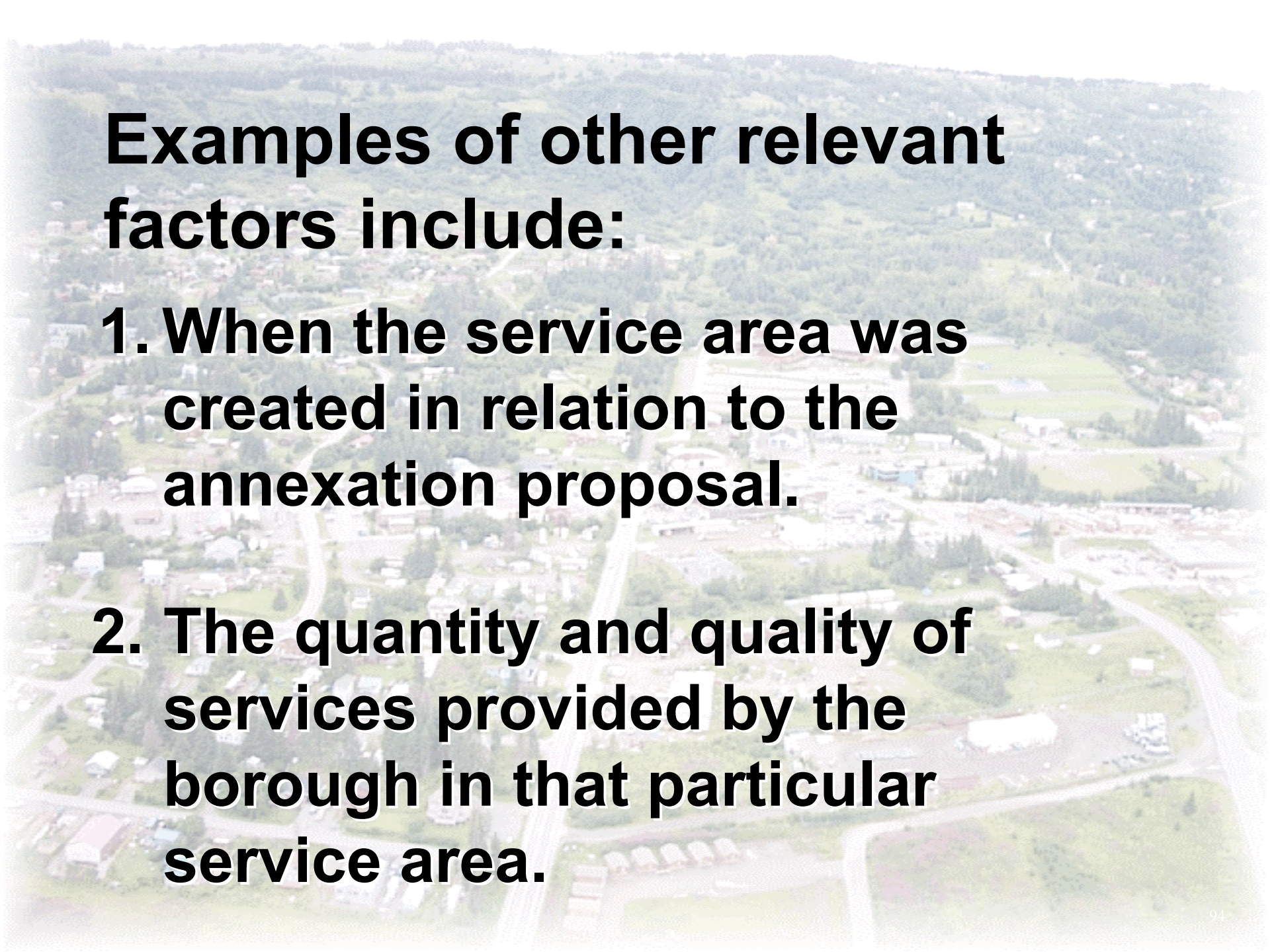
**Notably, the Administrative Procedure Act expressly prohibits the retroactive application of such (AS 44.62.240).**



An aerial photograph of a suburban town, showing a mix of residential houses, commercial buildings, and green spaces. The town is nestled at the base of a forested hill. The text is overlaid on the image in a large, bold, black font.

**If the LBC chooses to adopt a standard requiring consideration of the effect of a city annexation on an existing borough service area, consideration of a host of other factors would seem warranted.**



An aerial photograph of a town, likely in a rural or semi-rural area. The town features a mix of residential houses, commercial buildings, and parking lots. A prominent road runs through the center of the town. In the background, a large, densely forested hill rises above the town. The overall scene is captured from a high angle, providing a comprehensive view of the town's layout and its surrounding landscape.

# **Examples of other relevant factors include:**

- 1. When the service area was created in relation to the annexation proposal.**
- 2. The quantity and quality of services provided by the borough in that particular service area.**



# **Examples of other factors (continued):**

- 3. The need for more services or better services in the service area.**
- 4. Whether residents of the service area are receiving city services without commensurate support for such services.**



# **Examples of other factors (continued):**

**5. The prospect that new service areas might be formed in the territory in question.**

**6. The effects upon the city if annexation is denied.**



# **Examples of other factors (continued):**

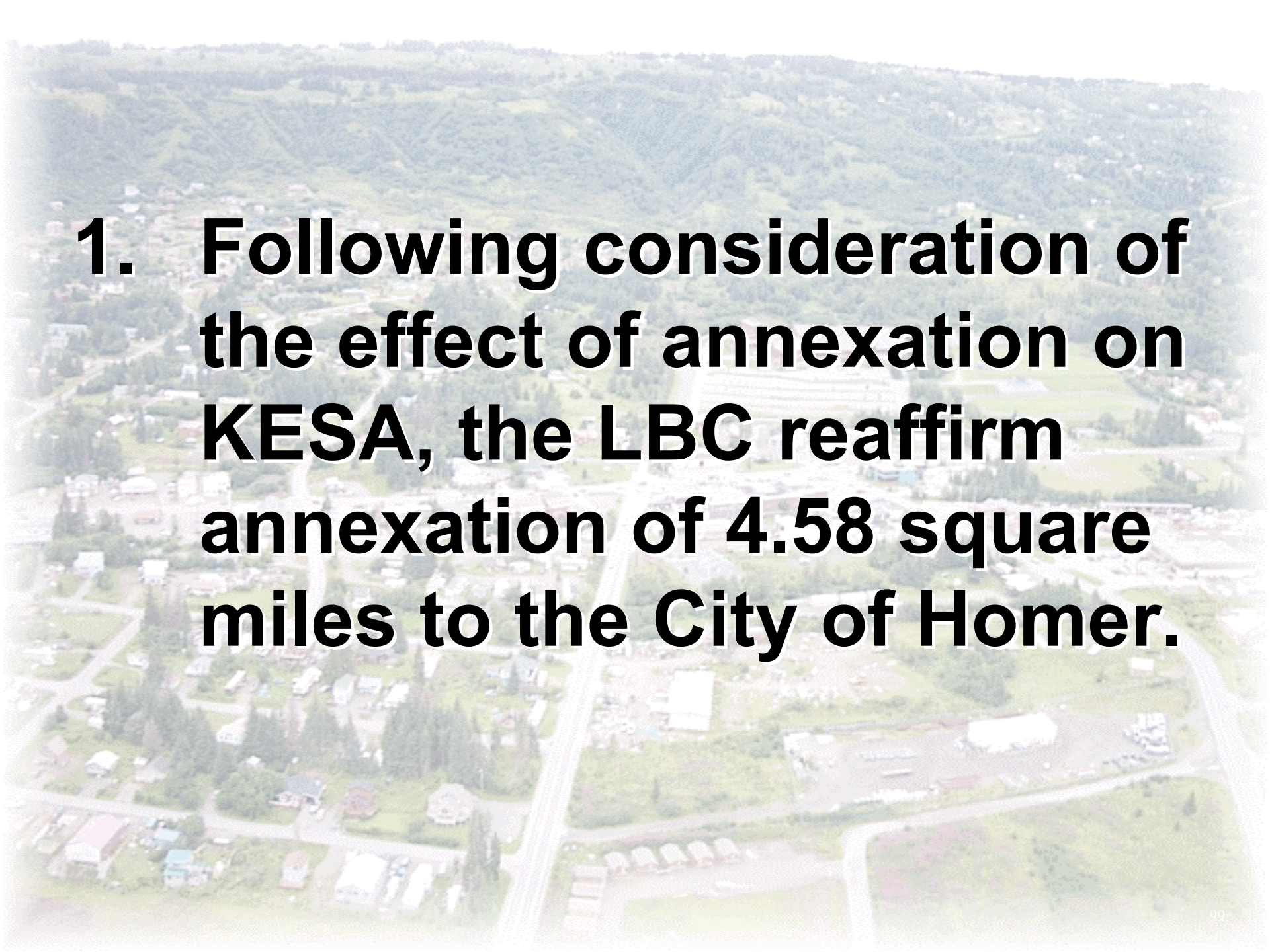
**7. Constitutional principles of maximum local self-government with a minimum of local government units.**



An aerial photograph of a town, likely in a mountainous region, with a large, densely forested hill in the background. The town features a mix of residential houses, commercial buildings, and parking lots. A major road runs through the center of the town. The text "Part IV - C. Staff's Recommendations." is overlaid in the center of the image.

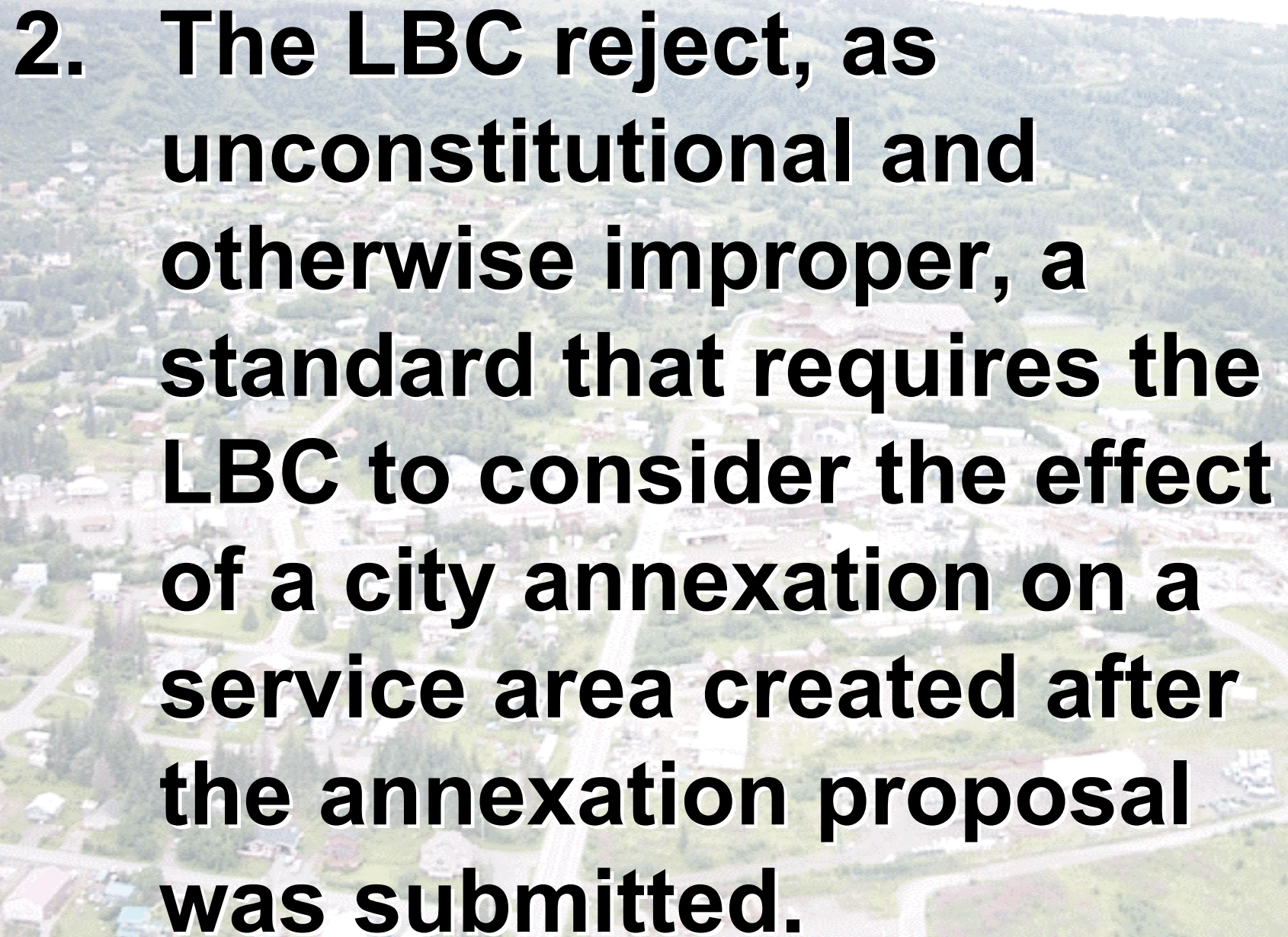
# **Part IV - C. Staff's Recommendations.**



An aerial photograph of a suburban town, likely Homer, Alaska, with a large, densely forested hill in the background. The town features residential houses, commercial buildings, and parking lots. The text is overlaid on the image in a large, bold, black font with a white outline.

**1. Following consideration of the effect of annexation on KESA, the LBC reaffirm annexation of 4.58 square miles to the City of Homer.**



An aerial photograph of a suburban neighborhood serves as the background. It shows a mix of green lawns, trees, and residential buildings. A road with a white center line runs diagonally through the scene. The overall tone is bright and slightly hazy.

**2. The LBC reject, as unconstitutional and otherwise improper, a standard that requires the LBC to consider the effect of a city annexation on a service area created after the annexation proposal was submitted.**



